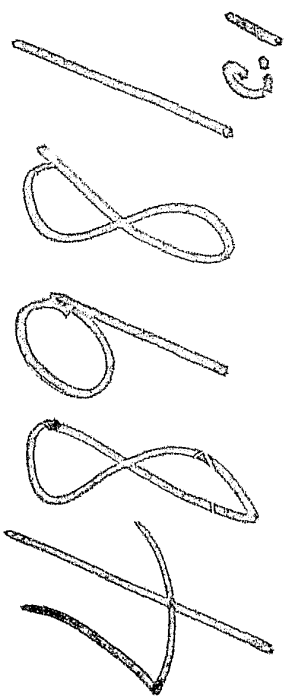
Privacy and Security of Criminal History Information

COMPENDIUM OF STATE LEGISLATION



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Privacy and Security of Criminal History Information

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National Criminal Justice Information and Statistics Service
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Acknowledgements

This Compendium of state legislation governing security and privacy of criminal justice information was prepared as one of the major tasks of a project under the auspices of the National Criminal Justice Information and Statistics Service (NCJISS) of the Law Enforcement Assistance Administration, U.S. Department of Justice. Involved in this legislative survey was detailed research into the statutes of the States and Territories of the United States, analysis of legislative provisions and organization of materials into a useable format.

The able efforts of Judith Gilliland and Emanuel Krakauer, my senior student research assistants, is gratefully acknowledged. Mr. Robert Aldrich, an attorney in Washington, D.C., examined state privacy and security plans which have been submitted to LEAA, to help as an additional check on the completeness of the statutory survey. Throughout the effort, Carol Kaplan, director of the NCJISS Privacy and Security Staff, provided helpful and supportive advice and guidance. Thanks for secretarial assistance go to Diane Gordon and Mary Smith.

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Introduction: Project Objectives

This is a Compendium of state laws regarding privacy and security requirements for criminal justice information. The purpose of this document is simply to gather current state legislation dealing with the topic in the hope that it may be of use to those who are reviewing or developing a legislative program. There are a variety of approaches and alternatives that may be pursued in articulating legislative policy for criminal justice information privacy. This Compendium presents the approaches that have been taken by the states, but it does not evaluate any of those efforts or suggest a model or standard.

A companion document, Privacy and Security of Criminal History Information: A Guide to Policy Development, explores policy implications of confidentiality requirements for criminal justice information. That document discusses various privacy policy options and is designed to assist policy analysts by examining the range of choices available in developing rules for control of criminal history information.

This Compendium is generally limited to state legislation, though occasionally state agency regulations or executive orders governing state agencies are included when they implement or are in lieu of legislation. No local government ordinances or other proposals that do not have force of law are included. Likewise, traffic laws or regulations and state licensing laws have been excluded unless they have direct reference to access to criminal justice information.

Though this Compendium is considered current as of January 1, 1978, it is not pretended that every existing piece of state legislation that may bear on the question of confidentiality or security of state criminal justice information has been identified; the scope of such an effort would be far beyond the purpose of this project. Researchers are cautioned, therefore, that further review of a particular state's legislation may be appropriate depending on the detail of the researcher's inquiry.

To assist in utilizing this Compendium, Table I (pages 8-24) contains a detailed matrix summarizing the results of this survey. References are keyed to specific sections of state legislation so that readers may easily locate the referenced provision within the subject state's materials. The legislation has been organized by state alphabetically, and the matrix references are to section numbers of the specific state code. Any reader desiring the complete legislative citation will find it by examining the legislation reproduced in the Compendium. A list of the categories utilized to classify the legislation and a description of definitions follows on pages 3-5.

Since one purpose of this survey was to examine the nature and extent of state legislative activity during the preceding three years, Table II (page 25) is a matrix comparing results of the current survey with results of a similar survey conducted by LEAA's Office of General Counsel in 1974. An analysis and discussion of the comparative results follows on pages 27-34.

Classification Categories

The following is a list of categories into which state legislation has been classified in Tables I and II.

In order to facilitate comparison of results, all but two of the categories used in the 1974 survey have been used in the current survey. In addition, two categories, dealing with freedom of information laws, are also included in the 1977 survey.

It should be understood that any attempt to define terms in the area of privacy and security can be expected to generate valid disagreement. The following definitions are simply offered, therefore, as a means to assist in interpretation of the matrixes set out in Tables I and II.

1. State regulatory authority. A grant of power to a state agency to promulgate statewide security and privacy regulations for criminal justice information systems.

2. Privacy and security council. A state board, committee, commission, or council whose primary statutory function is monitoring, evaluating, or supervising the confidentiality and security of criminal justice information.

3. Regulation of dissemination. Restrictions on dissemination of criminal history information.

4. Right to inspect. The right of an individual to examine his criminal history records.

5. Right to challenge. The right to an administrative proceeding in which an individual may contest the accuracy or completeness of information pertaining to him.

6. Judicial review of challenged information. The right of an individual to appeal an adverse agency decision concerning challenged information to a state court.

7. Purging: Non-Conviction information. The destruction or return to the individual of criminal justice information where no conviction has resulted from the event triggering the collection of the information.

8. Purging: Conviction information. The destruction or return to an individual of criminal history information indicating a conviction.

9. Sealing: Non-Conviction. The removal of criminal history information from active files where no conviction has resulted from the event triggering the collection of information.

10. Sealing: Conviction information. The removal from active files of individual criminal history information indicating a conviction.

11. Removal of disqualifications. The restoration of rights and privileges such as public employment to persons who have had criminal history records purged or sealed.

12. Right to state non-existence of a record. The right to indicate in response to public or private inquiries the absence of criminal history in cases of arrest not leading to conviction or where an arrest or conviction record has been purged.

13. Researcher access. The provision for and regulation of access to criminal justice information by outside researchers.

14. Accuracy and completeness. A requirement that agencies institute procedures to insure reasonably complete and accurate criminal history information, including the setting of deadlines for the reporting of prosecutorial and court dispositions.

15. Dedication. The requirement that computer configurations be assigned exclusively to the criminal justice function.

16. Civil remedies. Statutory actions for damages or other relief resulting from violations of various privacy and security laws.

17. Criminal penalties. Criminal sanctions for a violation of various privacy and security laws.

18. Public records. Requirements that certain criminal history records maintained by the police or courts be open to the public.

19. Separation of files. Requirements that criminal history information be stored separate from investigative and intelligence information.

20. Regulation of intelligence collection. Restrictions on the kind of intelligence information which may be collected and retained and/or prohibition on its storage in computerized systems.

21. Regulation of intelligence dissemination. Restrictions on dissemination of intelligence information.

22. Security. Requirements that criminal justice agencies institute procedures to protect their information systems from unauthorized disclosure, sabotage, and accidents.

23. Transaction logs. Records which must be maintained by criminal justice agencies indicating when and to whom criminal justice information is disseminated.

24. Training of employees. Security and privacy instruction which must be provided to employees handling criminal justice information.

25. Listing of information systems. A mandatory disclosure of the existence of all criminal justice information systems describing the information contained in such systems.

26. Open records, (including criminal justice information). Provisions for public access to governmental records that apply to criminal justice records.

27. Open records, (excluding criminal justice information). Provisions for public access to government records from which criminal justice records are specifically excluded.

Table I
Summary of Findings

TABLE I - Alabama, Alaska, Arizona

ITEM / STATE	Alabama	Alaska	Arizona
1. State Authority	§ 15-10-90 § 41-9-591	§12.62.010	§41-1750
2. Priv. & Sec. Council	§41-9-594		
3. Dissem. Regs.	§41-9-621, 622 41-9-642	§12.62.030	§13-1273 41-1750
4. Inspect	§ 41-9-621 § 41-9-643	§12.62.030	§41-1750(9)
5. Challenge	§41-9-645	§12.62.030	
6. Judicial Review	§41-9-645	§12.62.030	
7. Purge: Non-Conv.	§41-9-625	§12.62.040	
8. Purge: Conv.		§12.62.040	
9. Seal: Non-Conv.			
10. Seal: Conv.			§13-1761 §13-1744
11. Remove Disqual.			§13-1742 13-1743 13-1744
12. Deny CJ Record			
13. Research Access		12.62.030(c)	
14. Accurate, Complete	§41-9-622 et seq §41-9-634 §41-9-648		

ITEM / STATE	Alabama	Alaska	Arizona
15. Dedicate		§12.62.040	
16. Civil Remedy		§12.62.060	§39-121.02 §41-1750
17. Criminal Penalty	§36-12-42 §41-9-600 et seq.	§12.62.060	§13-1761
18. Public Records	§36-12-40		§39-121.01
19. Separate Files		Regs. §60.030	
20. Intell. Collection	§41-9-639	§12.62.010 §12.62.015	
21. Intell. Dissem.	§41-9-641	12.62.030(e) 12.62.010	§41-1750
22. Security	§41-9-594 §41-9-621	§12.62.040 §12.62.050	
23. Transact. Logs	§41-9-640		
24. Train Employees		12.62.030(d)	
25. List Systems			
26. F.O.I. Inc. CJ			
27. F.O.I. Excl. CJ			§39-121.01

TABLE I - Arkansas, California, Colorado

ITEM / STATE	Arkansas	California	Colorado
1. State Authority	5-1101 5-1103	§11027 §13800 §13820 §13830	24-32-401
2. Priv. & Sec. Council			
3. Dissem. Regs.		§11076 §11105 §13300 et seq	24-72-305
4. Inspect	5-1102 16-802 Reg §3	§11105(8) §11122 et seq	24-72-303 24-72-304
5. Challenge	5-1102 16-802 Reg §§ 4,5	§11126	24-72-307
6. Judicial Review		§11126	24-72-307
7. Purge: Non-Conv.			
8. Purge: Conv.	5-1109		
9. Seal: Non-Conv.		§851.8	24-72-308
10. Seal: Conv.	43-1231		24-72-305 (3), (4) 24-72-308
11. Remove Disqual.	43-1231 1233		24-72-308
12. Deny CJ Record			
13. Research Access		§11105 11144 13202 13205	
14. Accurate, Complete	5-1107 5-1112 16-802	§11105.5 11112 et seq 13127 13150 et seq	24-32-412

ITEM / STATE	Arkansas	California	Colorado
15. Dedicate			
16. Civil Remedy	16-808		30-10-101 24-72-305
17. Criminal Penalty	5-1110 5-1111 18-808 43-1235	§6251 et seq §11141 et s §13302 et s	24-72-309
18. Public Records	16-801 et seq	§6251	24-72-201 et seq 24-72-303
19. Separate Files		§13102	30-10-101
20. Intell. Collection	5-1102	§13102	
21. Intell. Dissem.	Reg. §2		24-72-305
22. Security	5-1103	§11077	
23. Transact. Logs		§11078 §11105.5	
24. Train Employees	5-1112	§11077	
25. List Systems	16-804		24-30-606 24-30-607
26. F.O.I. Inc. CJ	16-801 et seq		24-72-301 24-72-303
27. F.O.I. Excl. CJ		§6254 et seq	24-72-202 et seq

TABLE I - Connecticut, Delaware, D.C.

ITEM / STATE	Connecticut	Delaware	D.C.
1. State Authority		11 § 8501	
2. Priv. & Sec. Council			
3. Dissem. Regs.	§4-191 §29-16 §54-90	11 §4322 11 § of 518 29 § 10004	
4. Inspect	§4-193	11 §4322 11 §8511 29 §10002	
5. Challenge	§4-193		
6. Judicial Review	§4-194 §4-195		
7. Purge: Non-Conv.	§29-15 §54-90	11 §3904	
8. Purge: Conv.	§54-90		
9. Seal: Non-Conv.	§54-90		
10. Seal: Conv.			
11. Remove Disqual.			
12. Deny CJ Record	§54-90	11 §3904	
13. Research Access			
14. Accurate, Complete		11 §8503 et seq	§4-134

ITEM / STATE	Connecticut	Delaware	D.C.
15. Dedicate			
16. Civil Remedy	§4-197	29 §10005	
17. Criminal Penalty	§1-21k §29-17	11 §8520 11 §8521	
18. Public Records	§1-15 §1-19 §1-21j	29 §10001 et seq	§4-135
19. Separate Files			
20. Intell. Collection			
21. Intell. Dissem.	§1-19		
22. Security	§4-193		
23. Transact. Logs	§4-193		
24. Train Employees			
25. List Systems			
26. F.O.I. Inc. CJ	§4-193		
27. F.O.I. Excl. CJ		29 §10002	

TABLE I - Florida, Georgia, Hawaii

ITEM / STATE	Florida	Georgia	Hawaii
1. State Authority	20.201 943.05 943.06	92A-3002 92A-3005	§28-52
2. Priv. & Sec. Council	943.08	92A-3005	
3. Dissem. Regs.	943.08	92A-3003 140-2.01 et seq	§28-45 28-55 §831.31
4. Inspect	943.08	92A-3003 92A-3006 140-2.10	R.2 §92-51
5. Challenge	943.08	92A-3006 140-1-.06	R.2, R.3 & R.4
6. Judicial Review		92A-3006	
7. Purge: Non-Conv.			§831.32
8. Purge: Conv.	943.08		
9. Seal: Non-Conv.	901.33		§831.32
10. Seal: Conv.	893.14		§712-1256
11. Remove Disqual.	893.14 90.133		§712-1255 §831-3
12. Deny CJ Record	893.14 901.33		§712-1256 §831.32
13. Research Access			
14. Accurate, Complete	943.05 943.08 947.14 11C-4.03 11C-4.06	27-220 92A-302 92A-2501 et 92A-3004 140-2.03	§28-53 §28-56 R.4

ITEM / STATE	Florida	Georgia	Hawaii
15. Dedicate		92A-3003	
16. Civil Remedy		92A-3007	
17. Criminal Penalty	119.1U	92A-9939	§28-46
18. Public Records	119.01 et seq	27-220 40-2701	§571-84 §92-9 §92-50
19. Separate Files	943.08	140-2.02	
20. Intell. Collection	943.08	92A-3005	
21. Intell. Dissem.	943.08	140-2.02	§92-5, §92-6 §92-51 R. 5
22. Security	943.08	92A-3003 140-2.02	
23. Transact. Logs		92A-3003 140-2.02	
24. Train Employees	943.09 et seq	92A-3003 142-2.09	
25. List Systems			
26. F.O.I. Inc. CJ		40-2701	§92-50 et seq
27. F.O.I. Excl. CJ			

TABLE I - Idaho, Illinois, Indiana

ITEM / STATE	Idaho	Illinois	Indiana
1. State Authority	19-5201 19-4812	38 §206-1 38 §209-3 127 §55a	4-23-4-1 4-23-4-4 10-1-2.5-1
2. Priv. & Sec. Council		38 §209-6.15	
3. Dissem. Regs.	19-4812	38 §206-7 38 §1003-5-1	10-1-2.5-3 5-2-4-6
4. Inspect		Regs.	4-1-6-3
5. Challenge		Regs.	4-1-6-5
6. Judicial Review		Regs.	
7. Purge: Non-Conv.	19-4813	38 §206-5 127 §55a	35-4-8-1 et seq
8. Purge: Conv.			
9. Seal: Non-Conv.			
10. Seal: Conv.			
11. Remove Disqual.			
12. Deny CJ Record			
13. Research Access			
14. Accurate, Complete	19-4812 19-4813	38§206-2 38§206-2.1 38§206-5	4-1-6-2 4-1-6-5 5-2-4-4 10-1-1-5 10-1-1-18

ITEM / STATE	Idaho	Illinois	Indiana
15. Dedicate	19-5202		
16. Civil Remedy			
17. Criminal Penalty		38 §206-7	5-2-4-7 35-4-8-4
18. Public Records	9-301	116 §43.4	4-1-6-1 et seq 5-14-1-2 et seq
19. Separate Files			5-2-4-2
20. Intell. Collection			5-2-4-3
21. Intell. Dissem.			5-2-4-6
22. Security			4-1-6-2
23. Transact. Logs	38§1003-5-1		4-1-6-2
24. Train Employees	127§55a		4-1-6-2
25. List Systems			4-1-6-7
26. F.O.I. Inc. CJ			4-1-6-1 et seq
27. F.O.I. Excl. CJ			

TABLE I - Iowa, Kansas, Kentucky

ITEM / STATE	Iowa	Kansas	Kentucky
1. State Authority	749.1		15A.040 et seq
2. Priv. & Sec. Council	749B.19		
3. Dissem. Regs.	749A-4 749B.2 B.3	22-3711	17.150
4. Inspect	749A.4 749B.5 749B.8	21-4605 21-4616 21-4617	17.150 61.880 61.884
5. Challenge	749B.5 749B.8		
6. Judicial Review	749B.5		17.150
7. Purge: Non-Conv.	749.2 749B.16 749B.17		
8. Purge: Conv.			
9. Seal: Non-Conv.			
10. Seal: Conv.		21-4616 60-2702a	
11. Remove Disqual.		21-4616 21-4617 22-3722	
12. Deny CJ Record		21-4616 21-4617	
13. Research Access	749B.4		
14. Accurate, Complete	749.4 749B.5 749B.12 749B.15	21-2501 et seq 75-5218 50-712	17.110 17.147 17.150

ITEM / STATE	Iowa	Kansas	Kentucky
15. Dedicate			
16. Civil Remedy	749B.6		61.882
17. Criminal Penalty	749B.5 749B.7 749B.9		17.157
18. Public Records	749B.18	45-201	61.870 et seq
19. Separate Files	749B.8 749B.9		
20. Intell. Collection			
21. Intell. Dissem.	749B.3 749B.8 749B.19	21-4617	17.150
22. Security	749B.10 749B.12 749B.14		
23. Transact. Logs	749B.2 B.3		
24. Train Employees	749B.11		15.330 15A.070
25. List Systems			
26. F.O.I. Inc. CJ		50-712	61-878
27. F.O.I. Excl. CJ	749B.18		61-878

TABLE I - Louisiana, Maine, Maryland

ITEM / STATE	Louisiana	Maine	Maryland
1. State Authority	15§575 et 15§1201 et	25 §1541 198 §1669	27 §744
2. Priv. & Sec. Council			
3. Dissem. Regs.	15 §574.12 15 §577 15 §581.10	16 §603 16 §604 25 §1631	27 §740 27 §749
4. Inspect	R 1-06	16 §606	27 §747 27 §751 76A §3
5. Challenge	R 1-06	16 §606	27 §747 27 §752
6. Judicial Review		16 §606	27 §753
7. Purge: Non-Conv.	15 §581.8 44 §9		
8. Purge: Conv.	15 §581.8		
9. Seal: Non-Conv.	44 §9		27 §292 27 §736 27 §737
10. Seal: Conv.		15 §2161A	27 §292
11. Remove Disqual.	44 §9	15 §2161A	27 §292
12. Deny CJ Record			27 §292 27 §740
13. Research Access	15 §574.12 15 §580	16 §603	27 §745 43B §22
14. Accurate, Complete	15 §578 et 15 §581.2	15 §2161A 16 §606 25 §1542 25 §1547	27 §736 27 §747 27 §752

ITEM / STATE	Louisiana	Maine	Maryland
15. Dedicate			
16. Civil Remedy		25 § 1550	
17. Criminal Penalty	15 §581 15 §581.21 44 §37	15 §2161A 16 §605	27 §739 27 §754 43 B §22 76A §5
18. Public Records	44 §1	1 §401 et seq	76 A §1 et seq
19. Separate Files	$ 1-08		
20. Intell. Collection			
21. Intell. Dissem.	44 §3	16 §604 16 §606	76A §3
22. Security	15 §577 R 1-09 R 1-10	16 §603	27 §747
23. Transact. Logs	R 1-07		
24. Train Employees	R-1-11 R-1-12		88 13 §6
25. List Systems			
26. F.O.I. Inc. CJ		1 §401 et 16 §602	76A §1 et seq
27. F.O.I. Excl. CJ	44 §3		

TABLE I - Massachusetts, Michigan, Minnesota

ITEM / STATE	Massachusetts	Michigan	Minnesota
1. State Authority	6 §168	28.211	15.1641
2. Priv. & Sec. Council	6 §170		15.169
3. Dissem. Regs.	6 §172 276 §100	15.243 28.251	15.1641 364.04
4. Inspect	6 §175 66 A §2	15.233	15.165
5. Challenge	6 §175 66A §2		15.165
6. Judicial Review	6 §176		15.165 15.0425
7. Purge: Non-Conv.		28.243 780.223	
8. Purge: Conv.			364.04
9. Seal: Non-Conv.	276 §100C	335.347	299C.11
10. Seal: Conv.	94C §34 276 §100A		364.04
11. Remove Disqual.	276 §100A 276 §100C	335.347	364.03
12. Deny CJ Record	94C §34 276 §100A 276 §100C		
13. Research Access	6 §173		15.1641
14. Accurate, Complete	6 §171 6 §175 66A §2 127 §23 et	28.243 28.255 28.261	299C. 10et seq 15.1641

ITEM / STATE	Massachusetts	Michigan	Minnesota
15. Dedicate			
16. Civil Remedy	6 §127		15.166
17. Criminal Penalty	6 §128	750.492 28.246	15.167 16.169
18. Public Records	66 §10 66A §1 et seq	750.491 15.231	15.17
19. Separate Files	6 §167		
20. Intell. Collection			
21. Intell. Dissem.		15.243	15.162
22. Security	6 §171 6 §174 66A §2		15.1641
23. Transact. Logs	6 §172		
24. Train Employees	66A §2		
25. List Systems			15.163
26. F.O.I. Inc. CJ	66A §1 et seq	15.231	
27. F.O.I. Excl. CJ			15.1641

TABLE I - Mississippi, Missouri, Montana

ITEM / STATE	Mississippi	Missouri	Montana
1. State Authority	E.B. 201	E.O.	82A-1207
2. Priv. & Sec. Council			
3. Dissem. Regs.			82-417
4. Inspect		549.151	R
5. Challenge			R
6. Judicial Review			
7. Purge: Non-Conv.		610.100	80-2005
8. Purge: Conv.			
9. Seal: Non-Conv.		610.100	
10. Seal: Conv.			
11. Remove Disqual.			
12. Deny CJ Record		610.100	
13. Research Access			
14. Accurate, Complete		57.103 et 57.105	80-2005 R

ITEM / STATE	Mississippi	Missouri	Montana
15. Dedicate			
16. Civil Remedy	25-53-59		
17. Criminal Penalty		109.180 601.115	
18. Public Records	25-41-11	109.180 109.190	
19. Separate Files			
20. Intell. Collection			
21. Intell. Dissem.			
22. Security	25-53-5	E.O.	
23. Transact. Logs			
24. Train Employees			80-2006 82-421
25. List Systems			
26. F.O.I. Inc. CJ			
27. F.O.I. Excl. CJ	25-41-3		

TABLE I - Nebraska, Nevada, New Hampshire

ITEM / STATE	Nebraska	Nevada	New Hampshire
1. State Authority		216.185	
2. Priv. & Sec. Council			
3. Dissem. Regs.	R. 7		106-B:14 R-3
4. Inspect	R. 4	179.295	R-3, B9
5. Challenge	R. 7		R 3C
6. Judicial Review			
7. Purge: Non-Conv.			R 3D
8. Purge: Conv.			R 3D
9. Seal: Non-Conv.		179.255 179.275	
10. Seal: Conv.		179.245 179.275 453.336	651:5
11. Remove Disqual.			651:5
12. Deny CJ Record			651:5
13. Research Access			
14. Accurate, Complete		216.235 216.290	106-B:14

ITEM / STATE	Nebraska	Nevada	New Hampshire
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			106-B:14 651:5
18. Public Records	84-712	293.010 293.030	7A:1, 7A:4 91-A:4
19. Separate Files			
20. Intell. Collection			R.3
21. Intell. Dissem.	R.7		
22. Security			R.1
23. Transact. Logs		216.135	
24. Train Employees			
25. List Systems			7-A:2
26. F.O.I. Inc. CJ			
27. F.O.I. Excl. CJ			106-B:14 91-A:5

TABLE I - New Jersey, New Mexico, New York

ITEM / STATE	New Jersey	New Mexico	New York
1. State Authority	E.O.	4-25-8	Ex. Law §835 et seq
2. Priv. & Sec. Council	E.O.		
3. Dissem. Regs.	2A:85-18 53:6-18	41-25-8 41-24-3	Corr. Law § 211
4. Inspect			Crim. Pro. §160.40 §160.50 Pub.Off.Law § 89
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conv.			Crim. Pro. §160.50
8. Purge: Conv.			
9. Seal: Non-Conv.	2A:85-15 et seq		Crim. Pro. §160.50
10. Seal: Conv.	2A:164-28 2A:169-11 24:21-28		Crim. Pro. §170.56 Corr.Law § 752
11. Remove Disqual.	2A:164-28 2A:169-11 24:21-27	41-24-1 et seq	Crim. Pro. § 160.60
12. Deny CJ Record	2A:85-22 24:21-28		Crim. Pro. § 160.60
13. Research Access			Crim. Pro. § 160.20
14. Accurate, Complete	53:1-13 et seq	39-3-8	Corr. Law § 211 Ex. Law § 837-6
15. Dedicate			
16. Civil Remedy			Corr. Law §755
17. Criminal Penalty		71-5-3 4-25-8	
18. Public Records	Rule 1:38	75-5-1 et seq	Pub.Off.Law §87 et seq
19. Separate Files			
20. Intell. Collection			
21. Intell. Dissem.			Pub.Off.Law § 87
22. Security		4-25-7	Ex. Law § 837
23. Transact. Logs			
24. Train Employees		39-3-9	
25. List Systems			
26. F.O.I. Inc. CJ			
27. F.O.I. Excl. CJ		71-5-1 et seq (unclear)	

TABLE I - North Carolina, North Dakota, Ohio

ITEM / STATE	North Carolina	North Dakota	Ohio
1. State Authority	§143 B-338		
2. Priv. & Sec. Council			
3. Dissem. Regs.	§15-201	12-60-15	§149.43 5122.53 2953.32
4. Inspect			§2953.32
5. Challenge			
6. Judicial Review			
7. Purge: Non-Conv.			§190.60
8. Purge: Conv.			
9. Seal: Non-Conv.			
10. Seal: Conv.			§2951.04 §2953.32
11. Remove Disqual.			§2953.33
12. Deny CJ Record			§2953.33
13. Research Access	§114-10.1		
14. Accurate, Complete	§149.74	12-60-11 12-60-16	§109.57

ITEM / STATE	North Carolina	North Dakota	Ohio
15. Dedicate			
16. Civil Remedy	§ 132-5.1		§149.99 1343.10
17. Criminal Penalty	§132-3 et seq		§149-43 1347.99 2953.35
18. Public Records	§132-1 et seq	§21-04-18	§1340.01 et seq
19. Separate Files			
20. Intell. Collection			
21. Intell. Dissem.			
22. Security			§1347.05
23. Transact. Logs			
24. Train Employees	17 B-1 et s 17 A-1 et s	§109.71	
25. List Systems			§1347.03
26. F.O.I. Inc. CJ			
27. F.O.I. Excl. CJ			§1347.04 149.43

TABLE I - Oklahoma, Oregon, Pennsylvania

ITEM / STATE	Oklahoma	Oregon	Pennsylvania
1. State Authority	74 §8.1	E.O. 75-23	E.O. 1975-10
2. Priv. & Sec. Council		E.O. 75-23 §10, 11	
3. Dissem. Regs.	68 §205 22 §385 74 §118.17 74 §150.5	137.077 E.O. 75-23	61 §13
4. Inspect	22 §982	137.079 181.555 E.O. 75-23	E.O. 1975-10
5. Challenge	22 §982	181.555 E.O. 75-23	E.O. 1975-10
6. Judicial Review		137.079	
7. Purge: Non-Conv.	74 §150.7		
8. Purge: Conv.	74 §150.7		
9. Seal: Non-Conv.			
10. Seal: Conv.	11 §794 22 §991C 63 §2-410	137.225	
11. Remove Disqual.		137.275 137.260	
12. Deny CJ Record		137.225	
13. Research Access		E.O. 75-23 §§ 3,6	
14. Accurate, Complete	74 §150.10	181.511 181.521 E.O. 75-23	19 §1403 61 §16

ITEM / STATE	Oklahoma	Oregon	Pennsylvania
15. Dedicate			
16. Civil Remedy		192.490	
17. Criminal Penalty	21 §461 21 §531 74 §118.17	162.305	19 §1406
18. Public Records	6 §208 51 §24 63 §301	192.001 et seq	65 §66.1 et seq
19. Separate Files			
20. Intell. Collection		E.O. 75-23	
21. Intell. Dissem.		192.500	65 §66.1
22. Security	74 §118-17	E.O. 75-23	E.O. 1975-10
23. Transact. Logs			
24. Train Employees	74 §150.2		
25. List Systems	74 §118.13		
26. F.O.I. Inc. CJ		192.500	
27. F.O.I. Excl, CJ		181.540 192.500	

TABLE I - Puerto Rico, Rhode Island, South Carolina

ITEM / STATE	Puerto Rico	Rhode Island	South Carolina
1. State Authority			73-20
2. Priv. & Sec. Council			
3. Dissem. Regs.			23-3-140 73-23
4. Inspect			73-24
5. Challenge			73-24
6. Judicial Review			
7. Purge: Non-Conv.		12-1-12	17-1-40
8. Purge: Conv.	24 §2404 34 §1731	12-1-13	
9. Seal: Non-Conv.			
10. Seal: Conv.	24 §2404		
11. Remove Disqual.	24 §2404	12-1-13	
12. Deny CJ Record			
13. Research Access			
14. Accurate, Complete	24 §2518	12-1-10	23-1-90 23-3-40 73-22
15. Dedicate			
16. Civil Remedy		12-1-12	
17. Criminal Penalty			§23-1-90 §31-1-140
18. Public Records			§30-1-10 §30-3-20
19. Separate Files			73-21
20. Intell. Collection			
21. Intell. Dissem.			
22. Security			73-21 73-23
23. Transact. Logs			73-22
24. Train Employees			§23-23-10 et seq
25. List Systems			
26. F.O.I. Inc. CJ			
27. F.O.I. Excl. CJ			

TABLE I - South Dakota, Tennessee, Texas

ITEM / STATE	South Dakota	Tennessee	Texas
1. State Authority		38-1001 E.O. 9	
2. Priv. & Sec. Council			
3. Dissem. Regs.	23-5-7 23-6-14		
4. Inspect	23-6-11 E.D.O		
5. Challenge	E.D.O		
6. Judicial Review			
7. Purge: Non-Conv.			
8. Purge: Conv.		40-4001	
9. Seal: Non-Conv.			
10. Seal: Conv.	39-17-114		
11. Remove Disqual.	39-17-114		
12. Deny CJ Record			
13. Research Access			
14. Accurate, Complete	23-5-4 23-5-8	38-503	

ITEM / STATE	South Dakota	Tennessee	Texas
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty	25-4-3 23-6-18	15-306 40-4004	
18. Public Records	1-27-1 et seq	15-304 15-401	
19. Separate Files			
20. Intell. Collection			
21. Intell. Dissem.		15-305	
22. Security			
23. Transact. Logs			
24. Train Employees		38-1101	
25. List Systems			
26. F.O.I. Inc. CJ	1-27-1 et seq		
27. F.O.I. Excl. CJ			§ 3(3), (8)

TABLE I - Utah, Vermont, Virginia

ITEM / STATE	Utah	Vermont	Virginia
1. State Authority	77-59-3	20 §2051 et seq	9-107.1 9-109 9-111.3,4
2. Priv. & Sec. Council		E.O. 31	
3. Dissem. Regs.	63-50-7	28 §204 28 §601	9.111.6,7 19.2-389
4. Inspect	63-50-7 78-26-2	1 §318	9-111.11
5. Challenge	63-50-7	1 §318	9-111.11
6. Judicial Review	63-50-7	1 §318	9-111.11
7. Purge: Non-Conv.	77-35-1715		9-111.9
8. Purge: Conv.	77-35-17.5		9-111.9
9. Seal: Non-Conv.			9-111.9
10. Seal: Conv.			9-111.9
11. Remove Disqual.			
12. Deny CJ Record	77-35-17.5		
13. Research Access			19.2-389
14. Accurate, Complete	63-50-6		9-111.10

ITEM / STATE	Utah	Vermont	Virginia
15. Dedicate			
16. Civil Remedy	63-50-8		9-111.12
17. Criminal Penalty	63-50-9		9-111.13
18. Public Records	63.50-10		
19. Separate Files			
20. Intell. Collection		§ 1954 1955	
21. Intell. Dissem.		§ 1954 1955	
22. Security	63-50-6		9-111.10
23. Transact. Logs			
24. Train Employees			
25. List Systems	63-50-5		
26. F.O.I. Inc. CJ	63-50, et seq	1 §317 (unclear)	211-342 (unclear)
27. F.O.I. Excl. CJ		1 §317 28 §601	211-342 2.1-384

TABLE I - Virgin Islands, Washington, West Virginia

ITEM / STATE	Virgin Islands	Washington	West Virginia
1. State Authority		314 §9	
2. Priv. & Sec. Council			
3. Dissem. Regs.		314 § 4 et seq	
4. Inspect		314 § 8	
5. Challenge		314 § 8	
6. Judicial Review			
7. Purge: Non-Conv.		314 § 6	15-2-24(h)
8. Purge: Conv.			
9. Seal: Non-Conv.			
10. Seal: Conv.			
11. Remove Disqual.			
12. Deny CJ Record			
13. Research Access		314 § 4(5) 314 § 5(6)	
14. Accurate, Complete			

ITEM / STATE	Virgin Islands	Washington-Ton	West Virginia
15. Dedicate			
16. Civil Remedy		314 § 11	
17. Criminal Penalty		314 § 12	
18. Public Records	3 § 881		
19. Separate Files			
20. Intell. Collection			
21. Intell. Dissem.			
22. Security			
23. Transact. Logs			
24. Train Employees			
25. List Systems			
26. F.O.I. Inc. CJ	3 § 881(g)		
27. F.O.I. Excl. CJ		314 § 13	29B-1-4 (unclear)

TABLE I - Wisconsin, Wyoming

ITEM / STATE	Wisconsin	Wyoming	
1. State Authority		9-136.19,22 .31	
2. Priv. & Sec. Council			
3. Dissem. Regs.			
4. Inspect		9-692.3	
5. Challenge		9-692.3	
6. Judicial Review		9-692.3	
7. Purge: Non-Conv.			
8. Purge: Conv.			
9. Seal: Non-Conv.			
10. Seal: Conv.			
11. Remove Disqual.			
12. Deny CJ Record			
13. Research Access			
14. Accurate, Complete			

ITEM / STATE	Wisconsin	Wyoming	
15. Dedicate			
16. Civil Remedy			
17. Criminal Penalty			
18. Public Records			
19. Separate Files			
20. Intell. Collection			
21. Intell. Dissem.		9-136.27	
22. Security			
23. Transact. Logs			
24. Train Employees		9-136.24	
25. List Systems			
26. F.O.I. Inc. CJ			
27. F.O.I. Excl. CJ		9-692.3 (unclear)	

Table II

Comparison of 1974/1977 Surveys

ITEM	1974	1977
1. State Regulatory Authority	7	38
2. Privacy and Security Council	2	10
3. Regulation of Dissemination	24	40
4. Right to Inspect	12	40
5. Right to Challenge	10	30
6. Judicial Review of Challenged Information	10	20
7. Purging Non-Conviction Information	20	23
8. Purging Conviction Information	7	13
9. Sealing Non-Conviction Information	8	15
10. Sealing Conviction Information	7	20
11. Removal of Disqualifications	6	22
12. Right to State Non-Existence of a Record	6	13
13. Researcher Access	6	12

ITEM	1974	1977
14. Accuracy and Completeness	14	41
15. Dedication	2	3
16. Civil Remedies	6	22
17. Criminal Penalties	18	35
18. Public Records	9	43
19. Separation of Files	5	10
20. Regulation of Intelligence Collection	3	10
21. Regulation of Intelligence Dissemination	7	24
22. Security	12	26
23. Transaction Logs	6	11
24. Training of Employees	4	18
25. Listing of Information Systems	1	8

Discussion of Findings

As indicated, the objective of this project was to review recent state legislative activity relating to privacy and security of criminal history information. In this connection, a comparison has been made between results of the current survey and the survey conducted in 1974. Table II (page) sets forth the comparative results of the surveys. The purpose in this discussion is to consider the significance of the findings.

In considering the inferences that may be derived from the comparison and discussion, however, three factors should be clearly recognized. First, it should be understood that the 1974 and 1977 legislative searches and analyses were performed by two different sets of researchers who, though using the same categorical definitions, may not have made consistently similar judgments about the selection or analysis of legislation. Second, it should be recognized that precise classification of legislation may be difficult because of the wide variances in language and provisions that deal with similar subject matter; and that accordingly, assignments to classifications may at times be arbitrary. Third, it should be noted that the LEAA regulations that stimulated state legislative activity initially required privacy and security plans to be in effect by December 31, 1977, (though LEAA later extended this implementation date) and that as a result, some state programs may yet await legislation. For this reason interim agency regulations occasionally may have escaped the attention of the researchers. Nevertheless, useful observations can be made on the basis of comparison of the current and previous survey finding.

The following is a discussion of general and specific observations based on the current survey and on a comparison with prior 1974 findings.

General Observations

A general review of the survey indicates that there has been a significant increase in "public record" and "government in the sunshine" legislation during the past three years - a result that may have been stimulated by the experience of "Watergate." Similarly, the Federal Privacy Act of 1974 appears to have caused interest in "privacy" and a growing appreciation for fair information practices. Such practices support "confidentiality" and "security" objectives, especially with respect to personal information.

Review of the recent legislation indicates, however, that the bulk of "freedom of information" or "privacy" legislation does not reflect an awareness that specialized provisions may be appropriate for criminal justice information.

Additionally, it appears that not all states have followed what might be called a comprehensive legislative approach to criminal justice information policy. In this connection, many states intend that specific statutory implementation will be accomplished through promulgation of regulations pursuant to a broad legislative authority. Similarly, implementing regulations may also leave significant areas of discretion to information system managers or others. This reliance on regulations apparently reflects the view that the variance and complexity of criminal justice operations require that confidentiality policy be developed at a more operational level.

One ironic suspicion is that state legislative programs may have had a "reverse" effect (e.g., that attempts to provide confidentiality through legislation have instead resulted in increased access to criminal justice records). This may be the case since agencies and individuals who heretofore had not assumed they had access rights to criminal justice information (and may in fact have been refused direct access to information) may now realize that they may access data pursuant to newly enacted legislation. Despite this factor, however, it must be appreciated that the potential for abuse of criminal justice information is enormous, and that specific written policies are, therefore, generally preferable to informal and completely discretionary practices.

Analysis of Issues

The following is a discussion of findings made with respect to each of the categories addressed in both the 1974 and 1977 survey. For purposes of simplification, similar categories have been grouped for joint analysis.

Categories 1 & 2. State regulatory authority; privacy and security council.

Whereas in 1974, only about 15% of the states had designated a regulatory authority to oversee criminal justice information, in 1977, almost 80% of the states had done so. This figure may be misleading, however, because included here are those states whose legislation merely established an SPA with general authority for criminal justice development. For this reason there may be need to distinguish between the authority for development of a privacy plan and the authority for rule-making/ monitoring of information system operation (e.g., it may be that in some states the SPA has the lead in developing a confidentiality and security plan for state criminal justice information, although it might not have authority to oversee implementation of the plan of operation of the information system). Despite this possible inconsistency, however, it appears that the states have in fact increased their attention to criminal justice information management by centralizing the authority for development and implementation of criminal justice programs.

In this connection, it should be observed that only ten states have specifically designated privacy and security councils. This need not be interpreted as a lack of support for policy oversight with respect to confidentiality, however, since a state may have other options for the "watchdog" function than a separately established advisory council.

Categories 3, 18, 26 & 27. Regulation of dissemination; public records; F.O.I.A. laws.

A comparison of these four categories together provides some interesting insights. On the one hand, about 80% of the states have established some restrictions on the dissemination of criminal justice information, (e.g., adopting a presumption that all criminal justice records should not be open). Included in this category are those states which have restricted criminal justice information to criminal justice agencies unless otherwise specified.

On the other hand, more than 80% of the states have also enacted some "public record" provisions (in which the presumption is apparent that all government records should be public). In the case of "FOIA" legislation (e.g., Categories 26 and 27), the statutory language is generally so ambiguous as to make it difficult to tell the extent to which criminal justice information may have been contemplated specifically.

A valid observation might be, therefore, that, although the increasing number of "public record/sunshine laws" reflect the view that all government records should be public, a different philosophical position is taken when attention is focused specifically on criminal justice records (e.g., the view is taken that criminal justice data, although contained in government records, is potentially sufficiently harmful as to require additional disclosure control).

Where, of course, "confidentiality" and "public record" laws are enacted at separate times, or by separate committees, the relationship of the laws in terms of information policy may not have been considered, with resultant confusion and perhaps conflict of law and/or policy.

One ancilliary problem which should be noted is the fact that court records are frequently excepted from confidentiality requirements (though juvenile justice records are almost always kept confidential). In such cases, concern over separation of powers usually accounts for the exclusion of court records from privacy programs (since criminal justice information systems are generally maintained by the executive rather than the judicial branch). Legislative drafters must recognize, therefore, that a balance may have to be struck between separation of powers and confidentiality concern as respects criminal justice information policy.

Categories 4 thru 6. Inspection, challenge, and review.

About 80% of the states have provided for inspection by an individual of his own criminal justice record, though it is suspected that in practice agencies in almost all states will permit this. On the other hand, only about 60% of the states specifically provide for the challenge of inaccurate or incomplete information, though again it is suspected that as a practical matter most agencies probably will permit this since there is no reason to maintain wrong or incomplete information. Although only about 40% of the states provide specifically for judicial review in the event of a disputed challenge, this may be explained by the fact that in most states the aggrieved party can bring a civil action without legislative or regulatory authorization to do so. It is puzzling, nevertheless, that these interrelated provisions are often not treated as a package.

Categories 7 thru 10. Purging and sealing of records.

The 1977 survey indicates that since 1974 three more states (23) permit purging of non-conviction records, and seven more (15) have provided for sealing of such information. It would be an error to add those figures to conclude that close to 80% of the states have either purging or sealing of non-conviction records, however, since in many instances a state is counted in both categories when certain kinds of non-conviction information could be purged whereas other kinds would be

sealed. Taken together, therefore, it appears that during the last three years few states have specifically authorized purging or sealing of non-conviction records.

On the other hand, with respect to conviction records, during the last three years provisions for purging (13) have almost doubled and for sealing (20) they have about tripled. (As before, it would not be accurate to add purging and sealing to conclude that almost 65% of the states permit either purging or sealing of conviction records since there are some duplications between the categories within a state.) It should be noted that the vast majority of the new purging and sealing provisions for conviction relate to drug and first offenses. This appears to reflect a gradual change in states' positions with respect to drug abuse. Additionally, the increase in sealing/purging of first offender data may reflect the increasing attention which has been directed to rehabilitation and diversion from the criminal justice system.

It also should be noted that although, as previouslv indicated, most of the states appear to have adopted some presumptions of confidentiality when considering criminal justice records, states appear unwilling to fully support that presumption by requiring purging and/or sealing of records. Though it can be argued that purging or sealing may not be necessary if there are sufficient prohibitions on access by those outside the criminal justice system and that purging is an inappropriate "rewrite" of history, an examination of the range of exceptions to confidentiality appears to indicate that state legislatures are not entirely comfortable with the concept of a total prohibition on future access to any category of criminal justice information.

A further problem in some of the "court-order" purging statutes is that though an operating agency may be required to seal or destroy the specified information, there may not be provisions to seal or close the court record itself. Thus, as previously suggested, when the court is excepted from coverage under a confidentiality statute, the purposes of purging or sealing can be circumvented.

Categories 11 & 12. Removal of disqualifications and denial of record.

The number of states which have removed disqualifications for a criminal record (22) has more than tripled in the past three years. Only slightly more than half the states (13) that remove disqualifications also authorize the data subject to deny the existence of the record. Accordingly, an agency may be prohibited from denying employment solely on the basis of criminal history, though the job applicant is expected to disclose such history if asked. It should also be noted that significantly fewer states permit the data subject to deny the existence of the record than permit the record to be purged or sealed. Since purging

or sealing may be ineffective unless the data subject is free to deny the existence of those protected records, this would appear to be a basic inconsistency in policy. It may be, however, that this factor results merely from oversight on the part of those drafting legislation or regulations.

Category 13. Researcher access.

Though the number of states that specifically provide for researcher access to criminal justice data has doubled in the last three years, only 12 states specifically provide for such access. It may be that this is not preceived as a problem by state authorities who may have had few statistics or research requests outside the criminal justice system itself. (A prior LEAA publication released by NCJISS, "Confidentiality of Research and Statistical Data: A Compendium of State Legislation," reviews states' legislation pertaining to researcher access to all categories of government records.)

Category 14. Accuracy and completeness.

The number of states that now have requirements to ensure accuracy and completeness of data (41) appears to have almost tripled in the last three years. This figure includes states that have enacted legislation requiring "disposition reporting" even where there is not a specific requirement that records be "accurate and complete." Failure to specifically stipulate that records be "accurate and complete" may indicate that states are uncomfortable in legislatively establishing standards in this area and feel that this issue is better handled through regulations or procedures developed by a state repository.

Category 15. Dedication.

In the last three years only one state has legislatively opted for a dedicated criminal justice information system, bringing the total to three. In light of current fiscal constraints on state operation, this is not surprising since a likely result of dedication is to increase cost without an increase in confidentiality or security.

Categories 16 & 17. Civil and criminal penalties.

There appears to have been substantial activity in the states with respect to imposing civil remedies (22) or criminal penalties (35) for the violation of criminal justice information management rules. In a number of instances, the criminal penalties are imposed for a failure to properly discharge the responsibility of information system management without respect to whether a breach of confidentiality is involved.

Though fewer states impose sanctions than have dissemination requirements, nevertheless it appears that the states are willing to put some teeth into the enforcement of information management requirements.

Categories 12 thru 21. Separation and regulation of intelligence information.

Though the number of states that place restrictions on the dissemination of intelligence information (24) has more than tripled during the last three years, only a handful (10) place restrictions on the collection of such information or require that intelligence files be maintained separately from other criminal justice information. This would appear to indicate that though there is hesitancy to impair the ability of law enforcement agencies to collect intelligence information, the public is concerned about what is done with that information. (It should be noted, however, that since most law enforcement agencies with automated CCH systems do not include intelligence information in such automated systems, this has the practical effect of automatically separating intelligence files - a situation which does not exist in the case where records are maintained in a manual format only.) It is interesting, however, that despite Watergate, the Privacy Act of 1974, and criminal justice information confidentiality requirements, less than half the states have specifically dealt with this most sensitive and potentially harmful kind of information.

Category 22. Security requirements.

Though the number of states with specific provisions requiring security of systems has risen from 12 to 26 in the past three years, it may be wondered why about half the states have not at least paid lip service to security requirements. One reason may be, as suggested previously, that the states do not have standards by which to judge what is sufficient security for a particular information system. The absence of specific standards requires dependence upon the discretion of information system managers.

Category 23. Transaction logs.

The number of states that specifically require transaction logs has grown from 6 to 11 in the past three years; thus only about 20% of the states legislatively require such logs. Though transaction logs entail administrative burden and expense, without them it is virtually impossible to monitor compliance with information access requirements. (It is expected that a substantial number of states require maintenance of transaction logs through regulations, operating procedures, or user agreements, however.)

Category 24. Training of employees.

Only 18 states specifically provide for the training of employees, and this number even may be inflated since included in the count are states with general statutory or regulatory provisions for training of criminal justice personnel. As a practical matter, a greater number of states probably provide such training as standard operating procedures. One interesting approach is taken by Georgia which requires an employee to sign an "awareness statement" which indicates that he is aware of the regulations on criminal justice information access and agrees to abide by them.

Category 25. Listing of information systems.

Only a handful of states (8) specifically require the publication of the existence of criminal history information systems. This may reflect the belief that it is general knowledge that criminal justice agencies maintain records and files pertaining to individuals who have confronted the system, and that accordingly there is no need to incur the administrative burden and expense of publicizing the obvious. It should be noted, therefore, that this assumption may not necessarily be true when applied to the existence of intelligence information systems.

Compendium of Statutes

ARTICLE 23.

CRIMINAL JUSTICE INFORMATION CENTER COMMISSION.

Division 1.

General Provisions.

§ 41-9-590. Definitions.

When used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates a different meaning:

(1) CRIMINAL JUSTICE AGENCIES. Such term shall include those public agencies at all levels of government which perform as their principal function activities or planning for such activities relating to the identification, apprehension, prosecution, adjudication or rehabilitation of civil, traffic and criminal offenders.

(2) OFFENSE. Any act which is a felony or is a misdemeanor as described in section 41-9-622.

(3) CRIMINAL JUSTICE INFORMATION SYSTEM and SYSTEM. Such terms shall include that portion of those public agencies, procedures, mechanisms, media and criminal justice information center forms as well as the information itself involved in the origination, transmittal, storage, retrieval, analysis and dissemination of information related to reported offenses, offenders and actions related to such events or persons required to be reported to and received by, as well as stored, analyzed and disseminated by the Alabama criminal justice information center commission through the center.

(4) COMMISSION. The Alabama criminal justice information center commission.

(5) ACJICC. The Alabama criminal justice information center commission.

(6) ACJIC. The Alabama criminal justice information center.

(7) CENTER. The Alabama criminal justice information center.

(8) DIRECTOR. The director of the Alabama criminal justice information center. (Acts 1975, No. 872, § 1.)

§ 41-9-591. Creation; functions generally; responsibility for development, administration, etc., of Alabama criminal justice information center.

There is hereby created and established an Alabama criminal justice information center commission, which shall establish, develop and continue to operate a center and system for the interstate and intrastate accumulation, storage, retrieval, analysis and dissemination of vital information relating to certain crimes, criminals and criminal activity to be known as the Alabama criminal justice information center.

Central responsibility for the development, maintenance, operation and administration of the Alabama criminal justice information center shall be vested with the director of the ACJIC under the supervision of the Alabama criminal justice information center commission. (Acts 1975, No. 872, § 2.)

§ 41-9-592. Composition of commission; terms of service of members of commission.

The commission shall be composed of two sections.

The voting section will include: the attorney general, the chairman of the board of pardons and paroles, the commissioner of the board of corrections, the president of the Alabama sheriffs' association, the director of the department of public safety, the president of the Alabama association of chiefs of police, the director of the Alabama law enforcement planning agency, the president of the district attorney's association, the president of the circuit clerks' association, the chief justice of the Alabama supreme court, the president of the Alabama association of intermediate court judges, the president of the circuit judges' association, the governor's coordinator of Alabama highway and traffic safety and the director of the data systems management division of the Alabama department of finance.

The advisory section will include: the presiding officer of the Alabama senate, the speaker of the Alabama house of representatives, the president of the association of county commissions of Alabama, the president of the Alabama league of municipalities, the administrative director of the courts and a citizen of the state of Alabama, to be appointed by the governor. The member shall have authority to select a designee based upon qualifications and with a view of continuity of representation and attendance at the commission meetings.

No person or individual shall continue to serve on the commission when he no longer officially represents the function or serves in the capacity enumerated in this section as a member to which he was elected or appointed. (Acts 1975, No. 872, § 3.)

§ 41-9-593. Chairman and vice-chairman; meetings; quorum; record of transactions discussed or voted upon; compensation of members of commission.

The commission shall, upon its first meeting, elect from its membership a chairman and a vice-chairman who shall serve for a period of one year. The vice-chairman shall act in the place of the chairman in his absence or disability.

The commission shall meet at such times as designated by the commission or by the chairman at the state capital or at other places as is deemed necessary or convenient, but the chairman of the commission must call a meeting four times a year at the state capital or main location of the ACJIC in the months of January, April, July and October. The chairman of the commission may also call a special meeting of the commission at any time he deems it advisable or necessary. A quorum shall be a simple majority of the voting commission

membership or their designees and all matters coming before the commission shall be voted on by the commission.

The commission will keep or cause to be kept a record of all transactions discussed or voted on by the commission.

Members of the commission and their designees shall serve without compensation; except, that payment of their expenses may be paid in accordance with the applicable state travel regulations. (Acts 1975, No. 872, § 4.)

Cross reference. — As to travel expenses, see § 36-7-20 et seq.

§ 41-9-594. Establishment of rules, regulations and policies by commission generally; establishment of policies, safeguards, etc., as to collection, use, dissemination, etc., of criminal justice information; establishment, etc., of privacy and security committee.

The commission shall establish its own rules, regulations and policies for the performance of the responsibilities charged to it in this article.

The commission shall ensure that the information obtained under authority of this article shall be restricted to the items germane to the implementation of this article and shall ensure that the Alabama criminal justice information center is administered so as not to accumulate any information or distribute any information that is not required by this article. The commission shall ensure that adequate safeguards are incorporated so that data available through this system is used only by properly authorized persons and agencies.

The commission shall appoint a privacy and security committee from the membership of the commission who are elected officials, consisting of a chairman and three members, to study the privacy and security implications of criminal justice information and to formulate policy recommendations for consideration by the commission concerning the collection, storage, dissemination or usage of criminal justice information. The commission may establish other policies and promulgate such regulations that provide for the efficient and effective use and operation of the Alabama criminal justice information center under the limitations imposed by the terms of this article. (Acts 1975, No. 872, § 5.)

§ 41-9-595. Director and deputy director of criminal justice information center.

The commission shall appoint a director and a deputy director for the Alabama criminal justice information center who shall be responsible for the development, maintenance and operation of the ACJIC as required by the terms of this article and the implementation and operation of policies, programs and procedures established by the commission under the limitations of this article. The qualifications of the director and deputy director shall be determined by the state personnel department. (Acts 1975, No. 872, § 6.)

§ 41-9-596. Maintenance of staff and support services for center.

The director shall maintain the necessary staff along with support services necessary to enable the effective and efficient performance of the duties and responsibilities ascribed to the ACJIC in this article under the supervision of the commission. (Acts 1975, No. 872, § 7.)

§ 41-9-597. Applicability of rules and regulations of state personnel merit system to staff and personnel employed by commission; employment conditions, etc., of employees of agencies or institutions transferred to center or commission.

The staff and personnel employed by the commission for the development and operation of the center and system shall be governed by the personnel merit system rules and regulations of the state personnel department.

Employees of agencies or institutions which are transferred to the center or commission under the provisions of this article shall remain in their respective employments and shall be considered to meet the requirements of the department in terms of training and experience, but nothing in this section shall be construed to prevent or preclude the removal of an employee for cause in the manner provided by law. Such employees shall continue to enjoy employment conditions, including, but not limited to, salary range and advancement at a level no less than those enjoyed prior to transfer to the center or commission. All time accumulated while engaged in such prior employment shall be credited toward all privileges enjoyed under state merit employment. (Acts 1975, No. 872, § 8.)

§ 41-9-598. Appeals from rules and regulations promulgated by commission.

The process for appeals by an individual or governmental body of any rules and regulations promulgated by the commission shall first be to the commission proper. The appellant may present his argument at a regular meeting of the commission requesting the alteration or suggesting the nonapplicability of a particular rule and/or regulation. If the appellant is not satisfied by the action of the commission, then an appeal may be made to the circuit court in Montgomery county. (Acts 1975, No. 872, § 42.)

§ 41-9-599. Annual request for funds and budget; appropriations.

Annually the commission shall present to the governor a request for funds based on projected needs for criminal justice information systems in the state, together with a budget showing proposed expenditures, and the governor may include in his appropriation bill a request for funds to meet the financial needs of the commission. (Acts 1975, No. 872, § 43.)

§ 41-9-600. Failure of officer or official to make report or do act required by article.

Any officer or official mentioned in this article who neglects or refuses to make any report or to do any act required in this article shall be subject to

prosecution for a misdemeanor and, if found guilty, may be fined not less than $100.00 nor more than $10,000.00 and may be confined in a county jail for not more than one year. He shall also be subject to prosecution for nonfeasance and, if found guilty, shall be subject to removal from office therefor. (Acts 1975, No. 872, § 37.)

§ 41-9-601. Obtaining, etc., of criminal offender record information under false pretenses, falsification of information, etc.

Any person who willfully requests, obtains or seeks to obtain criminal offender record information under false pretenses or who willfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with this article, or any member, officer, employee or agent of the ACJICC, the ACJIC or any participating agency who willfully falsifies criminal offender record information or any records relating thereto shall, for each offense, be fined not less than $5,000.00 nor more than $10,000.00 or imprisoned in the state penitentiary for not more than five years or both. (Acts 1975, No. 872, § 35.)

§ 41-9-602. Communication, etc., of criminal offender record information in violation of article.

Any person who knowingly communicates or seeks to communicate criminal offender record information, except in accordance with this article, shall, upon conviction, be guilty of a misdemeanor and, for each such offense, may be fined not less than $500.00 nor more than $10,000.00 or imprisoned for not less than 30 days nor more than one year or both. (Acts 1975, No. 872, § 36.)

§ 41-9-603. Effect of article upon other provisions of law, etc.

(a) In the event of conflict, this article shall, to the extent of the conflict, supersede all conflicting parts of existing statutes which regulate, control or otherwise relate, directly or by implication, to the collection, storage and dissemination or usage of fingerprint identification, offender criminal history, uniform crime reporting and criminal justice activity data records or any conflicting parts of existing statutes which relate, directly or by implication, to any other provisions of this article.

(b) The provisions of this article shall not alter, amend or supersede the statutes and rules of law governing the collection, storage, dissemination or usage of records concerning individual juvenile offenders in which they are individually identified by name or other means until such time as the Alabama legislature provides legislation permitting the collection, storage, dissemination or usage of records concerning individual juvenile offenders.

(c) All laws or parts of laws which conflict with this article are hereby repealed. No part of this article shall violate provisions of article 8 of chapter 4 of Title 41 of this Code, Article VI of the Constitution of Alabama of 1901 or chapter 1 of Title 44 of this Code. (Acts 1975, No. 872, §§ 38, 39, 41.)

Division 2.

Collection, Dissemination, etc., of Criminal Data.

§ 41-9-620. Commission to provide for uniform crime reporting system.

The commission shall provide for a uniform crime reporting system for the periodic collection and analysis of crimes reported to any and all criminal justice agencies within the state. The collection of said data and the time for submission of said data shall be subject to the commission's regulation-making authority. (Acts 1975, No. 872, § 9.)

§ 41-9-621. Powers and duties of commission as to collection, dissemination, etc., of crime and offender data, etc., generally.

The commission, acting through the director of the Alabama criminal justice information center, shall:

(1) Develop, operate and maintain an information system which will support the collection, storage, retrieval, analysis and dissemination of all crime and offender data described in this article consistent with those principles of scope, security and responsiveness prescribed by this article;

(2) Cooperate with all criminal justice agencies within the state in providing those forms, procedures, standards and related training assistance necessary for the uniform operation of the statewide ACJIC crime reporting and criminal justice information system;

(3) Offer assistance and, when practicable, instruction to all criminal justice agencies in establishing efficient systems for information management;

(4) Compile statistics on the nature and extent of crime in Alabama and compile data for planning and operating criminal justice agencies; provided, that such statistics shall not identify persons. The commission shall make available all such statistical information obtained to the governor, the legislature, the judiciary and any such other governmental agencies whose primary responsibilities include the planning, development or execution of crime reduction programs. Access to such information by such governmental agencies shall be on an individual written request basis or in accordance with the approved operational procedure, wherein must be demonstrated a need to know, the intent of any analyses and dissemination of such analyses, and shall be subject to any security provisions deemed necessary by the commission;

(5) Periodically publish statistics, no less frequently than annually, that do not identify persons and report such information to the chief executive officers of the agencies and branches of government concerned; such information shall accurately reflect the level and nature of crime in this state and the general operation of the agencies within the criminal justice system;

(6) Make available, upon request, to all criminal justice agencies in this state, to all federal criminal justice and criminal identification agencies and to state criminal justice and criminal identification agencies in other states any

information in the files of the ACJIC which will aid these agencies in crime fighting; for this purpose the ACJIC shall operate 24 hours per day, seven days per week;

(7) Cooperate with other agencies of this state, the crime information agencies of other states and the uniform crime reports and national crime information center systems of the federal bureau of investigation or any entity designated by the federal government as the central clearinghouse for criminal justice information systems in developing and conducting an interstate, national and international system of criminal identification, records and statistics;

(8) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records as provided for elsewhere in this article and to cooperate in the correction of the central ACJIC records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual; and

(9) Institute the necessary measures in the design, implementation and continued operation of the criminal justice information system to ensure the privacy and security of the system. Such security measures must meet standards to be set by the commission as well as those set by the nationally operated systems for interstate sharing of such information. (Acts 1975, No. 872, § 10.)

§ 41-9-622. Report, collection, dissemination, etc., of data pertaining to persons arrested or convicted of felonies or certain misdemeanors generally.

The commission is authorized to obtain, compare, file, analyze and disseminate, and all state, county and municipal criminal justice agencies are required to report fingerprints, descriptions, photographs and any other pertinent identifying and historical criminal data on persons who have been or are hereafter arrested or convicted in this state or any state for an offense which is a felony or an offense which is a misdemeanor escalating to a felony involving, but not limited to: possession of burglary tools or unlawful entry; engaging in unlawful commercial gambling; dealing in gambling; dealing in gambling devices; contributing to the delinquency of a child; robbery, larceny or dealing in stolen property; possession of controlled substances and illegal drugs, including marijuana; firearms; dangerous weapons; explosives; pandering; prostitution; rape; sex offenses, where minors or adults are victims; misrepresentation; fraud; and worthless checks. (Acts 1975, No. 872, § 11.)

§ 41-9-623. Submission to department of public safety by criminal justice agencies of fingerprints, photographs, etc., of persons arrested for felonies and misdemeanors described in section 41-9-622; duty of sheriffs, parole and probation officers, etc., to furnish other data to center.

All criminal justice agencies within the state shall submit to the ACJIC, by forwarding to the Alabama department of public safety, fingerprints, descriptions, photographs, when specifically requested, and other identifying data on persons who have been lawfully arrested in this state for all felonies and certain misdemeanors described in section 41-9-622.

It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, parole and probation officers, wardens or other persons in charge of correctional or detention institutions in this state to furnish the ACJIC with any other data deemed necessary by the commission to carry out its responsibilities under this article. (Acts 1975, No. 872, § 12.)

§ 41-9-624. Determination by commission as to criminal record of person arrested and notification of requesting agency or arresting officer.

The commission is authorized to compare all fingerprints and other identifying data received with information already on file, to ascertain whether or not a criminal record is found for that person and at once to inform the requesting agency or arresting officer of such facts. (Acts 1975, No. 872, § 15.)

§ 41-9-625. Obtaining by law enforcement and correction agencies of fingerprints, photographs, etc., of persons arrested as fugitives from justice, unidentified human corpses, etc.; procedure where persons arrested released without charge or cleared of offense.

All persons in this state in charge of law enforcement and correction agencies shall obtain or cause to be obtained the fingerprints according to the fingerprint system of identification established by the commission, full face and profile photographs, if photo equipment is available, and other identifying data of each person arrested for an offense of a type designated in section 41-9-622, of all persons arrested or taken into custody as fugitives from justice and of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed taken within the previous year are on file. Fingerprints and other identifying data of persons arrested for offenses other than those designated in this article may be taken at the discretion of the agency concerned.

If any person arrested or taken into custody is subsequently released without charge or cleared of the offense through criminal justice proceedings, such disposition shall be reported by all state, county and municipal criminal justice agencies to ACJIC within 30 days of such action, and all such information shall be eliminated and removed. (Acts 1975, No. 872, § 19.)

§ 41-9-626. Forwarding of fingerprints, photographs, etc.

Fingerprints and other identifying data required to be taken by this article shall be forwarded within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned; but, if not forwarded, the fingerprint record shall be marked "photo available," and the photographs shall be forwarded subsequently if the commission so requests. (Acts 1975, No. 872, § 20.)

§ 41-9-627. Forwarding to department of public safety of descriptions of arrest warrants which cannot be served; notice where warrant subsequently served or withdrawn; annual, etc., confirmation of warrants remaining outstanding.

All persons in this state in charge of criminal justice agencies shall submit to the ACJIC by forwarding to the Alabama department of public safety detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated.

If the warrant is subsequently served or withdrawn, the criminal justice agency concerned must immediately notify the ACJIC of such service or withdrawal.

The agency concerned also must annually, no later than January 31 of each year and at other times if requested by the commission, confirm to the ACJIC all arrest warrants of this type which continue to be outstanding. (Acts 1975, No. 872, § 21.)

§ 41-9-628. Obtaining and forwarding to department of public safety by penal and correctional institutions of fingerprints, photographs, etc., of persons committed thereto; procedure upon release of such persons.

All persons in charge of state penal and correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the commission, and full face and profile photographs of all persons received on commitment to these institutions. The prints so taken shall be forwarded to the ACJIC by forwarding to the Alabama department of public safety together with any other identifying data requested within 10 days after the arrival at the institution of the person committed.

At the time of release, the institution will again obtain fingerprints as before and forward them to ACJIC within 10 days along with any other related information requested by the commission. Immediately upon release, the institution shall notify ACJIC of the release of such person. (Acts 1975, No. 872, § 22.)

§ 41-9-629. Forwarding of data to criminal justice information center by department of public safety.

The Alabama department of public safety shall forward to ACJIC within a reasonable period, not to exceed 72 hours, all data collected pursuant to sections 41-9-623, 41-9-627 and 41-9-628. (Acts 1975, No. 872, § 23.)

§ 41-9-630. Furnishing of other identifying data to center by criminal justice agencies generally; furnishing of information in criminal identification files.

All persons in charge of criminal justice agencies in this state shall furnish the ACJIC with any other identifying data required in accordance with guidelines established by the ACJIC.

All criminal justice agencies in this state having criminal identification files shall cooperate in providing to ACJIC information in such files as will aid in establishing the nucleus of the state criminal identification file. (Acts 1975, No. 872, § 24.)

§ 41-9-631. Submission by criminal justice agencies of uniform crime reports; contents thereof.

All criminal justice agencies within the state shall submit to the ACJIC periodically, at a time and in such a form as prescribed by the commission, information regarding only the cases within its jurisdiction. Said report shall be known as the "Alabama uniform crime report" and shall include crimes reported and otherwise processed during the reporting period.

Said report shall contain the number and nature of offenses committed, the disposition of such offenses and such other information as the commission shall specify relating to the method, frequency, cause and prevention of crime. (Acts 1975, No. 872, § 25.)

§ 41-9-632. Submission of uniform crime reports by other governmental agencies; use of information contained therein.

Any governmental agency which is not included within the description of those departments and agencies required to submit the uniform crime report which desires to submit such a report shall be furnished with the proper forms by the ACJIC. When a report is received by ACJIC from a governmental agency not required to make such a report, the information contained therein shall be included within the periodic compilation provided for in this article. (Acts 1975, No. 872, § 30.)

§ 41-9-633. Reporting by criminal justice agencies of persons wanted and vehicles and property stolen.

All criminal justice agencies within the state shall report to the ACJIC, in a time and manner prescribed by the commission, all persons wanted by and all vehicles and property stolen from their jurisdictions. The reports shall be made

as soon as is practical after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the reporting department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested. The commission shall have authority to institute any and all procedures necessary to trace and complete the investigative cycles of stolen vehicles or wanted persons. (Acts 1975, No. 872, § 26.)

§ 41-9-634. Notification of center, etc., of apprehension of person or recovery of property.

If it is determined by the reporting agency that a person is no longer wanted due to his apprehension or any other factor, or when a vehicle or property reported stolen is recovered, the determining agency shall notify immediately the Alabama criminal justice information center. Furthermore, if the agency making such apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall notify immediately the originating agency of the full particulars relating to such apprehension or recovery. (Acts 1975, No. 872, § 27.)

§ 41-9-635. Supplying of information on delinquent parolees by probation and parole officers.

All probation and parole officers shall supply the ACJIC with the information on delinquent parolees required by this article in a time and manner prescribed by the commission. (Acts 1975, No. 872, § 29.)

§ 41-9-636. Limitations upon provision of information generally.

Provision of information under this article shall be limited by all constitutional provisions, limitations and guarantees, including, but not limited to, due process, the right of privacy and the tripartite form of Alabama's state government. (Acts 1975, No. 872, § 41.)

§ 41-9-637. Obtaining and dissemination of identifying data and criminal histories generally — Persons convicted of offenses described in section 41-9-622 and confined to jails, workhouses, etc.

Pertinent identifying data and historical criminal information may be obtained and disseminated on any person confined to any workhouse, jail, reformatory, prison, penitentiary or other penal institution having been convicted of an offense described in section 41-9-622. (Acts 1975, No. 872, § 13.)

§ 41-9-638. Same — Unidentified human corpses found in state.

Pertinent identifying data and historical criminal information may be obtained and disseminated on any unidentified human corpse found in this state. (Acts 1975, No. 872, § 14.)

§ 41-9-639. Information which may be included in criminal histories.

Information in a criminal history, other than physical and identifying data, shall be limited to those offenses in which a conviction was obtained or to data relating to the current cycle of criminal justice administration if the subject has not yet completed that cycle. (Acts 1975, No. 872, § 16.)

§ 41-9-640. Log of disseminations of criminal histories.

A log shall be maintained of all disseminations made of each criminal history, including the date of information request and the recipient of said information. (Acts 1975, No. 872, § 17.)

§ 41-9-641. Dissemination of information to criminal justice agencies outside state.

The ACJIC shall not disseminate any information concerning any person to any criminal justice agencies outside of the state of Alabama unless said information pertains to a conviction of the person. (Acts 1975, No. 872, § 6.)

§ 41-9-642. Unconstitutional, etc., invasions of privacy of citizens not authorized by article; disclosure of criminal histories, etc., which might lead to identification of individuals to whom information pertains not to be made to persons, agencies, etc., not having "need to know" or "right to know."

Nothing in this article shall be construed to give authority to any person, agency or corporation or other legal entity to invade the privacy of any citizen as defined by the Constitution, the legislature or the courts other than to the extent provided in this article.

Disclosure of criminal histories or other information that may directly or otherwise lead to the identification of the individual to whom such information pertains may not be made to any person, agency, corporation or other legal entity that has neither the "need to know" nor the "right to know" as determined by the commission pursuant to section 41-9-594. (Acts 1975, No. 872, § 31.)

§ 41-9-643. Inspection of criminal records by persons to whom records pertain or attorneys thereof; establishment of procedures, etc., pertaining thereto by commission generally.

The center shall make a person's criminal records available for inspection to him or his attorney upon written application to the commission. Forms, procedures, identification and other related aspects pertinent to such access may

be prescribed by the commission in providing access to such records and information. (Acts 1975, No. 872, § 32.)

§ 41-9-644. Establishment of procedures, fees, etc., by agencies for inspection of criminal offender records; disposition of fees collected.

Agencies, including ACJIC, at which criminal offender records are sought to be inspected may prescribe reasonable hours and places of inspection and may impose such additional procedures, fees (not to exceed $5.00) or restrictions, including fingerprinting, as are reasonably necessary to assure the records' security, to verify the identities of those who seek to inspect them and to maintain an orderly and efficient mechanism for such accesses.

All fees collected are to be forwarded to the state general fund for disposition. (Acts 1975, No. 872, § 35.)

§ 41-9-645. Purging, modification or supplementation of criminal records — Applications to agencies by individuals; appeals to circuit courts upon refusal of agencies to act, etc.; costs.

If an individual believes such information to be inaccurate or incomplete, he may request the original agency having custody or control of the detail records to purge, modify or supplement them and to so notify the ACJIC of such changes.

Should the agency decline to so act or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual or his attorney may within 30 days of such decision enter an appeal to the circuit court of the county of his residence or to the circuit court in the county where such agency exists, with notice to the agency, pursuant to acquiring an order by such court that the subject information be expunged, modified or supplemented by the agency of record. The court in each such case shall conduct a de novo hearing and may order such relief as it finds to be required by law. Such appeals shall be entered in the same manner as appeals are entered from the court of probate; except, that the appellant shall not be required to post bond nor pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at the first term or in chambers. A notice sent by registered or certified mail shall be sufficient service on the agency of disputed record that such appeal has been entered.

The party found to be in error shall assume all costs involved. (Acts 1975, No. 872, § 33.)

§ 41-9-646. Same — Entry of court order for purging, modification or supplementation of record and compliance therewith by agencies, etc.; notification of agencies, individual, etc., of deletions, amendments, etc., in records.

Should the record in question be found to be inaccurate, incomplete or misleading, the court shall order it to be appropriately purged, modified or supplemented by an explanatory notation. Each agency or individual in the state

with custody, possession or control of any such record shall promptly cause each and every copy thereof in his custody, possession or control to be altered in accordance with a court order. Notification of each such deletion, amendment and supplementary notation shall be promptly disseminated to any individuals or agencies to which the records in question have been communicated, including the ACJIC, as well as to the individual whose records have been ordered so altered. (Acts 1975, No. 872, § 34.)

§ 41-9-647. Establishment of guidelines for action and institution of actions for violations as to data reporting or dissemination.

The commission shall establish guidelines for appropriate measures to be taken in the instance of any violation of data reporting or dissemination and shall initiate and pursue appropriate action for violations of rules, regulations, laws and constitutional provisions pertaining thereto. (Acts 1975, No. 872, § 18.)

§ 41-9-648. Compilation of information and statistics pertaining to disposition of criminal cases.

The administrator of the department of court management or the chief administrative officer of any other entity that is charged with the compilation of information and statistics pertaining to the disposition of criminal cases shall report such disposition to the ACJIC within a reasonable time after formal rendition of judgment as prescribed by the commission. (Acts 1975, No. 872, § 28.)

§ 15-10-90. Sheriffs to fingerprint persons taken into custody; disposition of copies of fingerprints.

It shall be the duty of the sheriff of each county in this state who shall first take a person into custody to fingerprint such person and furnish a copy of such fingerprints, with the fingerprint card properly filled out, to the director of the federal bureau of investigation, Washington, D.C., and a copy to the director, department of public safety, state bureau of investigation, Montgomery, Alabama. (Acts 1943, No. 420, p. 385, § 1.)

§ 15-10-91. Central state assembling agency for receipt of fingerprint records designated; duties thereof.

The department of public safety, state bureau of investigation, shall constitute the central assembling agency of the state of Alabama for receiving such fingerprint records. Said agency shall maintain such records and shall furnish to all law-enforcement agencies and officers of the state of Alabama any information to be derived therefrom on request in writing. (Acts 1943, No. 420, p. 385, § 2.)

§ 15-10-92. Furnishing of fingerprinting equipment generally.

The county commissions of the several counties in this state shall furnish to the sheriffs of the respective counties, at county expense, such equipment as may be required for the purpose of this article other than fingerprint cards and envelopes. (Acts 1943, No. 420, p. 385, § 3.)

§ 15-10-93. Furnishing of fingerprint cards and envelopes.

The state of Alabama, through the department of public safety, shall provide the form of the fingerprint cards and furnish the several sheriffs with said uniform fingerprint cards and envelopes. (Acts 1943, No. 420, p. 385, § 4.)

§ 36-12-40. Rights of citizens to inspect and copy public writings.

Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. (Code 1923, § 2695; Code 1940, T. 41, § 145.)

§ 36-12-41. Public officers to provide certified copies of writings upon payment of fees therefor; admissibility in evidence of copies.

Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing. (Code 1923, § 2696; Code 1940, T. 41, § 147.)

§ 36-12-42. Refusal of public officer to permit examination of records free of charge.

Any public officer having charge of any book or record who shall refuse to allow any person to examine such book or record free of charge shall, on conviction, be fined not less than $50.00. (Code 1852, § 652; Code 1867, § 772; Code 1876, § 4158; Code 1886, § 3949; Code 1896, § 5133; Code 1907, § 7439; Code 1923, § 5030; Code 1940, T. 41, § 146.)

CRIMINAL JUSTICE ADVISORY COMMISSION.

§ 41-9-570. Created; composition.

There is hereby created the Alabama criminal justice advisory commission, hereinafter referred to as the commission, to be composed of the following members: The commissioner of the board of corrections; the chairman of the board of pardons and paroles; the commissioner of mental health; the director of the department of public safety; the attorney general; the chief justice of the Alabama supreme court; the head of the Alabama law enforcement planning agency; the superintendent of education; the president of the fraternal order of police; the director of the Alabama law institute; the chairman of the Alabama bar association committee on correctional institutions and procedures; the finance director of the state of Alabama; the governor; the lieutenant governor; the speaker of the house of representatives; the director of the department of youth services; the chairmen of the judiciary committees of the house of representatives and senate of the state of Alabama; or a designated representative of each of the above. In addition, the president of the Alabama district attorneys' association shall be a member of the commission. In addition, the members of any joint interim committee of the legislature created by Act 12, S.J.R. 9, Organizational Session 1975 to study the criminal justice system shall be members of the Commission until January 1, 1979. Thereafter, the members of any joint interim committee of the legislature created to study the criminal justice system shall be members of the commission. (Acts 1975, No. 1201, § 1.)

§ 41-9-571. Meetings; officers.

The commission shall meet in the Capitol on the call of the governor and shall elect one of its members as chairman and one of its members as vice-chairman and thereafter shall meet from time to time on call of the chairman; except, that the commission shall meet at least twice yearly for the conduct of its business. (Acts 1975, No. 1201, § 2.)

§ 41-9-572. Function.

It shall be the function of the commission to encourage cooperation among its members in order to improve the operations of the criminal justice system. (Acts 1975, No. 1201, § 3.)

§ 41-9-573. Reports.

The commission shall report to the governor and to the legislature within 15 days after the convening of each regular session of the legislature and at such other times as it deems appropriate. (Acts 1975, No. 1201, § 4.)

§ 41-9-574. Expenses.

Members of the commission shall be reimbursed for actual expenses for mileage, meals and lodging while attending meetings of the commission. (Acts 1975, No. 1201, § 5.)

Chapter 62. Criminal Justice Information Systems Security and Privacy.

Effective date.—Section 3, ch. 161, SLA 1972, provides: "This Act takes effect October 1, 1972."

Sec. 12.62.010. Regulations. The Governor's Commission on the Administration of Justice established under AS 44.19.746—44.19.758 is authorized, after appropriate consultation with representatives of state and local law enforcement agencies participating in information systems covered by this chapter, to establish rules, regulations, and procedures considered necessary to facilitate and regulate the exchange of criminal justice information and to insure the security and privacy of criminal justice information systems. The notice and hearing requirements of the Administrative Procedure Act (AS 44.62), relating to the adoption of regulations, apply to regulations adopted under this chapter. (§ 1 ch 161 SLA 1972)

Sec. 12.62.020. Collection and storage. (a) The commission shall establish regulations concerning the specific classes of criminal justice information which may be collected and stored in criminal justice information systems.

(b) No information collected under the provisions of any of the following titles of the Alaska Statutes, except for information related to criminal offenses under those titles, may be collected or stored in criminal justice information systems:

(1) AS 02, except chs. 20, 30 and 35;
(2) AS 03—04;
(3) AS 05, except chs. 20, 25, 30 and 35;
(4) AS 06—10;
(5) AS 13—15;
(6) AS 17;
(7) AS 18, except AS 18.60.120—18.60.175 and ch. 65;
(8) AS 19—27;
(9) AS 29—32;
(10) AS 34—46; and
(11) AS 47, except ch. 10.

(§ 1 ch 161 SLA 1972)

Sec. 12.62.030. Access and use. (a) Except as provided in (b) and (c) of this section, access to specified classes of criminal justice information in criminal justice information systems is available only to individual law enforcement agencies according to the specific needs of the agency under regulations established by the commission under § 10 of this chapter. Criminal justice information may be used only for law enforcement purposes or for those additional lawful purposes necessary to the proper enforcement or administration of other provisions of law as the commission may prescribe by regulations established under § 10 of this chapter. No criminal justice information may be disseminated to an agency before the commission determines the agency's eligibility to receive that information.

(b) Criminal justice information may be made available to qualified persons for research related to law enforcement under regulations established by the commission. These regulations must include procedures to assure the security of information and the privacy of individuals about whom information is released.

(c) A person shall have the right to inspect criminal justice information which refers to him. If a person believes the information to be inaccurate, incomplete or misleading, he may request the criminal justice agency having custody or control of the records to purge, modify or supplement them. If the agency declines to do so, or if the person believes the agency's decision to be otherwise unsatisfactory, the person may in writing request review by the commission within 60 days of the decision of the agency. The commission, its representative or agent shall, in a case in which it finds a basis for complaint, conduct a hearing at which the person may appear with counsel, present evidence, and examine and cross-examine witnesses. Written findings and conclusions shall be issued. If the record in question is found to be inaccurate, incomplete or misleading, the commission shall order it to be appropriately purged, modified or supplemented by an explanatory notation. An agency or person in the state with custody, possession or control of the record shall promptly have every copy of the record altered in accordance with the commission's order. Notification of a deletion, amendment and supplementary notation shall be promptly disseminated by the commission to persons or agencies to which records in question have been communicated, as well as to the person whose records have been altered.

(d) An agency holding or receiving criminal justice information shall maintain, for a period determined by the commission to be appropriate, a listing of the agencies to which it has released or communicated the information. These listings shall be reviewed from time to time by the commission or staff members of the com-

mission to determine whether the provisions of this chapter or any applicable regulations have been violated.

(e) Reasonable hours and places of inspection, and any additional restrictions, including fingerprinting, that are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them may be prescribed by published rules. Fingerprints taken under this subsection may not be transferred to another agency or used for any other purpose.

(f) A person or agency aggrieved by an order or decision of the commission under (c) of this section may appeal the order or decision to the superior court. The court shall in each case conduct a de novo hearing and may order the relief it determines to be necessary. If a person about whom information is maintained by an agency challenges that information in an action under this subsection as being inaccurate, incomplete or misleading, the burden is on the agency to prove that the information is not inaccurate, incomplete or misleading. (§ 1 ch 161 SLA 1972)

Sec. 12.62.040. Security, updating, and purging. (a) Criminal justice information systems shall

(1) be dedicated to law enforcement purposes and be under the management and control of law enforcement agencies unless exempted under regulations prescribed under § 10 of this chapter;

(2) include operating procedures approved by the commission which are reasonably designed to assure the security of the information contained in the system from unauthorized disclosure, and reasonably designed to assure that criminal offender record information in the system is regularly and accurately revised to include subsequently furnished information;

(3) include operating procedures approved by the commission which are designed to assure that information concerning an individual shall be removed from the records, based on considerations of age, nature of record, and reasonable interval following the last entry of information indicating that the individual is still under the jurisdiction of a law enforcement agency.

(b) Notwithstanding any provision of this section, any criminal justice information relating to minors which is maintained as part of a criminal justice information system must be afforded at least the same protection and is subject to the same procedural safeguards for the benefit of the individual with respect to whom the information is maintained, in matters relating to access, use and security as it would be under AS 47.10.090. (§ 1 ch 161 SLA 1972)

Sec. 12.62.050. Interstate systems for the exchange of criminal justice information. (a) The commission shall regulate the partici-

pation by all state and local criminal justice agencies in an interstate system for the exchange of criminal justice information, and shall be responsible to assure the consistency of the participation with the provisions and purposes of this chapter. The commission may not compel any criminal justice agency to participate in an interstate system.

(b) Direct access to an interstate system for the exchange of criminal justice information shall be limited to those criminal justice agencies that are expressly designated for that purpose by the commission. When the system employs telecommunications access terminals, the commission shall limit the number and placement of the terminals to those for which adequate security measures may be taken and as to which the commission may impose appropriate supervisory regulations. (§ 1 ch 161 SLA 1972)

Sec. 12.62.060. Civil and criminal remedies. (a) A person with respect to whom criminal justice information has been wilfully maintained, disseminated, or used in violation of this chapter has a civil cause of action against the person responsible for the violation and shall be entitled to recover actual damages and reasonable attorney fees and other reasonable litigation costs.

(b) A person who wilfully disseminates or uses criminal justice information knowing such dissemination or use to be in violation of this chapter, upon conviction, is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both.

(c) A good faith reliance upon the provisions of this chapter or of applicable law governing maintenance, dissemination, or use of criminal justice information, or upon rules, regulations, or procedures prescribed under this chapter is a complete defense to a civil or criminal action brought under this chapter. (§ 1 ch 161 SLA 1972)

Sec. 12.62.070. Definitions. In this chapter

(1) "criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations related to the system funded in whole or in part by the Law Enforcement Assistance Administration, for the collection, processing, or dissemination of criminal justice information;

(2) "criminal justice information" means information concerning an individual in a criminal justice information system and indexed under the individual's name, or retrievable by reference to the individual by name or otherwise and which is collected or stored in a criminal justice information system;

(3) "commission" means the Governor's Commission on the Administration of Justice established under AS 44.19.746—44.19.758;

(4) "interstate systems" means agreements, arrangements and systems for the interstate transmission and exchange of criminal justice information, but does not include record keeping systems in the state maintained or controlled by a state or local agency, or group of agencies, even if the agency receives information through, or otherwise participates in, systems for the interstate exchange of criminal justice information;

(5) "law enforcement" means any activity relating to crime prevention, control or reduction or the enforcement of the criminal prevention, control or reduction or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control or reduce crime or to apprehend criminals, activities of criminal prosecution, courts, public defender, corrections, probation or parole authorities;

(6) "law enforcement agency" means a public agency which performs as one of its principal functions activities pertaining to law enforcement. (§ 1 ch 161 SLA 1972)

Chapter 62. Criminal Justice Information Systems Security and Privacy.

Sec. 12.62.010. Regulations. (a) The Governor's Commission on the Administration of Justice established under AS 44.19.746 — 44.19.758 is authorized, after appropriate consultation with representatives of state and local law-enforcement agencies participating in information systems covered by this chapter, to establish rules, regulations, and procedures considered necessary to facilitate and regulate the exchange of criminal justice information and to insure the security and privacy of criminal justice information systems. The notice and hearing requirements of the Administrative Procedure Act (AS 44.62), relating to the adoption of regulations, apply to regulations adopted under this chapter.

(b) In addition to regulations adopted under (a) of this section, the commission shall, after appropriate consultation with representatives of state and local law-enforcement agencies, adopt regulations and procedures governing the gathering of intelligence information and the storage, security, and privacy of the intelligence information collected and maintained by law-enforcement agencies in the state. The notice and hearing requirements of the Administrative Procedure Act (AS 44.62), relating to the adoption of regulations, apply to regulations adopted under this subsection. In adopting these regulations, the commission shall take into account both the interest of law-enforcement agencies in maintaining the ability to conduct intelligence operations and each individual's right to privacy. (§ 1 ch 161 SLA 1972; am § 1 ch 38 SLA 1976)

Effect of amendment. — The 1976 amendment added subsection (b).

Sec. 12.62.015. Collection and security of intelligence information. (a) Regulations of the commission, adopted under § 10(b) of this chapter, shall include requirements and guidelines concerning the categories of intelligence information which may be gathered by law-enforcement

agencies in the state, the purposes for which intelligence information may be collected, and the methods and procedures which may be used in collecting intelligence information.

(b) The commission's regulations adopted under § 10(b) of this chapter shall establish standards for the confidentiality and security of intelligence information and provide for controls, access to and dissemination of intelligence information, and methods for updating, correcting and purging intelligence information while maintaining the security and confidentiality of the information. (§ 2 ch 38 SLA 1976)

Sec. 12.62.017. Annual report to commission. The chief officer of each state or municipal law-enforcement agency shall submit an annual report to the commission, in the form required by the commission, certifying compliance by the agency with the regulations adopted by the commission under § 10(b) of this chapter. (§ 2 ch 38 SLA 1976)

Sec. 12.62.060. Civil and criminal remedies. (a) A person with respect to whom criminal justice information has been wilfully maintained, disseminated, or used, or intelligence information has been collected, obtained or used, in violation of this chapter has a civil cause of action against the person responsible for the violation and shall be entitled to recover actual damages and reasonable attorney fees and other reasonable litigation costs.

(b) A person who wilfully disseminates or uses criminal justice information knowing such dissemination or use to be in violation of this chapter, or who knowingly collects, obtains or uses intelligence information in violation of this chapter, upon conviction, is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both.

(c) A good faith reliance upon the provisions of this chapter or of applicable law governing maintenance, dissemination, or use of criminal justice information, or upon rules, regulations, or procedures prescribed under this chapter is a defense to a civil or criminal action brought under this chapter. (§ 1 ch 161 SLA 1972; am § 3 ch 38 SLA 1976)

Effect of amendment. — The 1976 amendment inserted "or intelligence information has been collected, obtained or used" in subsection (a) and "or who knowingly collects, obtains or uses intelligence information in violation of this chapter" in subsection (b).

Sec. 12.62.070. Definitions. In this chapter

(7) "intelligence information" means information concerning the background, activities or associations of an individual or group collected or obtained by a law-enforcement agency for preventive, precautionary or general investigative purposes not directly connected with the investigation of a specific crime which has been committed nor with the apprehension of a specific person in connection with the commission of a particular crime.

(am § 4 ch 38 SLA 1976)

TITLE 6 GOVERNOR'S OFFICE

PART 3. GOVERNOR'S COMMISSION ON THE ADMINISTRATION OF JUSTICE

CHAPTER 60. CRIMINAL JUSTICE INFORMATION SYSTEMS

Article
1. Collection and Storage of Criminal Justice Information (§§ 10-20)
2. Security (§§ 30-40)
3. Access and Use (§§50-90)
4. Purging of Criminal Justice Information (§§100-130)
5. General Provisions (§140)

ARTICLE 1. COLLECTION AND STORAGE OF CRIMINAL JUSTICE INFORMATION

Section
10. Scope of Regulations
20. Categories of Criminal Justice Information Which May Be Collected and Stored

6 AAC 60.010. SCOPE OF REGULATIONS. The regulations in this chapter apply only to the electronic, computer retrieval of criminal justice information from a criminal justice information system as defined in AS 12.62.070(1). (Eff. 10/09/72, Reg. 44; am / /73, Reg. 45)

Authority: AS 12.62.010
AS 12.62.070

6 AAC 60.020. CATEGORIES OF CRIMINAL JUSTICE INFORMATION WHICH MAY BE COLLECTED AND STORED. The following categories of information may be collected and stored in an electronic, computer retrieval, criminal justice information system as criminal justice information:

(1) an individual's full name, and any aliases known to refer to that person including, but not limited to, nicknames;

(2) an identifying number which each criminal justice information system may assign to an individual to whom criminal justice information, otherwise collected and stored under authority of this section, relates;

(3) an individual's physical description and physical description classification including, but not limited to, height, weight, sex, color of hair, color of eyes, identification of race, and other identifying physical features;

(4) an individual's date of birth;

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(5) an individual's citizenship;

(6) an individual's last known residence;

(7) information, which shall include the date of collection and storage, originating from a source that is reasonably considered reliable by the law enforcement agency collecting the information indicating that an individual who is the subject of an arrest warrant or a police investigation may be armed or dangerous, has attempted suicide, or has a disabling medical condition which may require immediate attention or treatment;

(8) an individual's current driver's license class and number, the issuing authority, the date of expiration, any suspension, revocation or cancellation of the license, a record of prior recorded violations of state statutes, regulations or local ordinances pertaining to the operation of a motor vehicle, a record of accident involvement, license application information and other information relevant to the issuance and regulation of driver's licenses;

(9) an individual's last recorded fish and/or game license number(s), including year of issue and current status;

(10) an individual's social security number;

(11) an individual's Federal Bureau of Investigation file number;

(12) an individual's Alaska State Trooper file number, including date of entry, type of contact and type of subject involvement;

(13) all other police agency file numbers which refer to an individual, including date of entry, type of contact and type of subject involvement;

(14) an individual's fingerprint classification;

(15) all current arrest warrants, summons, missing person notifications, requests to contact for an emergency notification and investigatory requests to locate without contacting;

(16) stolen vehicle information which pertains to the identity, including, but not limited to, ownership, of the vehicle itself;

(17) an individual's arrest history including charge, date and disposition;

(18) an individual's prior recorded convictions for criminal offenses, including charge, date and disposition;

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(19) a physical description relating to the circumstances surrounding the prior recorded convictions of an individual for a criminal offense;

(20) parole, probation, and correctional information relating to the current status of an individual;

(21) administrative correctional information including date of arrest, status change date, if any, supervision status, location of primary responsibility and corrections officer in charge, location of secondary responsibility and corrections officer in charge, physical location of the individual, placement location of the individual, literal field describing which placement location, numerical code indicating which location retains a current file on the individual, whether information is on fiche file, projected date of release from supervision, and similar administrative information;

(22) court calendaring information;

(23) terminal security information;

(24) operator security information;

(25) system errors information;

(26) administrative messages.

(Eff. 10/09/72, Reg. 44; am / /73, Reg. 45)

Authority: AS 12.62.010
AS 12.62.020(a)(b)

ARTICLE 2. SECURITY

Section
30. Segregation of Computerized Files and their Linkage to Investigatory Files
40 Terminal Security

6 AAC 60.030. SEGREGATION OF COMPUTERIZED FILES AND THEIR LINKAGE TO INVESTIGATORY FILES. (a) Files shall be stored in such a manner that they cannot be destroyed, accessed, changed or overlaid in any fashion by any agency not authorized to do sc under this chapter.

(b) The project director of each criminal justice information system shall have installed a program that will prohibit inquiry, file updates or destruction from any terminal other than criminal justice information system terminals authorized to do so under this chapter. The destruction of files shall be limited to terminals under the management and control of the criminal justice agency responsible for maintaining the files.

(c) The project director of each criminal justice information system shall have written and installed a classified program to detect, and store for classified output, all attempts to penetrate any criminal justice information system, program or file. This program and the records of such program shall be kept continuously under maximum security conditions.

(d) Recording material containing criminal offender record information, when not physically on the computer, shall be kept in a fire resistant locked facility at or near the computer facility. All other material may be kept in a locked facility remote from the computer facility.

(e) Agencies automating complete records systems may not link records so that a criminal offender record inquiry will include information which indicates the existence of an investigatory, in-house custodial or management file.

(f) Criminal offender record information files may be linked in such a manner that an investigatory or management inquiry from a criminal justice terminal will initiate a printout of the individual's criminal offender record information. (Eff. 10/09/72, Reg. 44; am / /73, Reg. 45)

Authority: AS 12.62.010
AS 12.62.040(a)(1)(2)

6 AAC 60.040. TERMINAL SECURITY. (a) A background investigation by a law enforcement agency adhering to standards prescribed by the commission shall be conducted with respect to all personnel who have access to a criminal justice information system terminal in an operational environment prior to being assigned to that terminal.

(b) Physical plant security shall be provided by all agencies with access to a computerized criminal justice information system to insure maximum safeguards against fire, theft and all unauthorized entry to areas where criminal justice information is stored, processed or disseminated.

(c) Whenever access to the facility by an uncleared person is necessary, a cleared person shall be responsible for keeping the uncleared person(s) under direct observation at all times. (Eff. 10/09/72, Reg. 44; am / /73, Reg. 45)

Authority: AS 12.62.010
AS 12.62.040(a)

ARTICLE 3. ACCESS AND USE

Section
50. Input and Update
60. Access

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70. Secondary Users
80. Individual's Right to Information
90. Research Use of Criminal Justice Information

6 AAC 60.050. INPUT AND UPDATE. Authorized agencies and the specified categories of criminal justice information which they may input and update are:

(1) Alaska State Troopers: Sec. 020(1), (3) - (7), (10) - (19), (26) of this chapter;

(2) Local Police Departments: Sec. 020(1), (3) - (7), (10), (11), (13) - (19), (26) of this chapter;

(3) Identification Section of the Technical Services Division of the Department of Public Safety: Sec. 020(1), (3) - (6), (10) - (19), (26) of this chapter;

(4) Driver's License Section of the Technical Services Division of the Department of Public Safety: Sec. 020(1), (3) - (6), (8), (10), (26) of this chapter;

(5) Fish and Wildlife Protection Division of the Department of Public Safety: Sec. 020(1), (3) - (7), (9), (10), (15), (26) of this chapter;

(6) Alaska State Court System: Sec. 020(1), (3) - (6), (8) - (10), (15), (17), (18), (20), (22), (26) of this chapter;

(7) Division of Corrections of the Department of Health and Social Services: Sec. 020(1), (3) - (6), (10), (15), (17), (20), (21), (26) of this chapter;

(8) Department of Law and Local Prosecution Agencies: Sec. 020(1), (3) - (6), (10), (15), (17), (18), (26) of this chapter;

(9) Alaska Public Defender Agency: Sec. 020(1), (3) - (6), (10), (26) of this chapter;

(10) Master Terminal: Sec. 020(1) - (7), (10) - (19), (23), (24), (26) of this chapter;

(11) Control Terminal: Sec. 020(25), (26) of this chapter. (Eff. 10/09/72, Reg. 44; am / /73, Reg. 45)

Authority: AS 12.62.010
AS 12.62.020(a)

6 AAC 60.060. ACCESS. Authorized agencies and the specified categories of criminal justice information which they may have access to are:

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(1) Alaska State Troopers: Sec. 020(1) - (20), (22), (26) of this chapter;

(2) Local Police Departments: Sec. 020(1) - (20), (22), (26) of this chapter;

(3) Identification Section of the Technical Services Division of the Department of Public Safety: Sec. 020(1) - (6), (8) - (20), (22), (26) of this chapter;

(4) Driver's License Section of the Technical Services Division of the Department of Public Safety: Sec. 020(1) - (6), (8) -(10), (15), (22), (26) of this chapter;

(5) Fish and Wildlife Protection Division of the Department of Public Safety: Sec. 020(1) - (10), (15), (16), (22), (26) of this chapter;

(6) Alaska State Court System: Sec. 020(1) - (6), (8) - (10), (15), (17), (18), (20), (22), (26) of this chapter;

(7) Division of Corrections of the Department of Health and Social Services: Sec. 020(1) - (6), (10) - (15), (17) - (22), (26) of this chapter;

(8) Department of Law and Local Prosecution Agencies: Sec. 020(1) - (6), (8) - (15), (17), (18), (20), (22), (26) of this chapter;

(9) Alaska Public Defender Agency: Sec. 020(1) - (6), (8) - (14), (17), (18), (20), (22), (26) of this chapter, upon the condition that, and for so long as, the Alaska Public Defender Agency releases or communicates, subject to the requirements of sec. 70 of this chapter, those specific categories of criminal justice information, for which access has been authorized under this subsection, and for which a nominal sum, reflective of administrative cost, may be imposed, to attorneys who certify that they represent an individual who, at the time a release or communication is made, is a defendant in a criminal prosecution and that the information to be released or communicated relates to that prosecution;

(10) Master Terminal: Sec. 020(1) - (20), (22) - (24), (26) of this chapter;

(11) Control Terminal: Sec. 020(25), (26) of this chapter. (Eff. 10/09/72, Reg. 44; am / /73, Reg. 45)

Authority: AS 12.62.010
AS 12.62.020(a)

6 AAC 60.070. SECONDARY USERS. (a) Criminal justice information may be used only for law enforcement purposes, for research related to law enforcement, or for those addi-

research programs, and each criminal justice agency shall be responsible for their full and prompt enforcement:

(1) Criminal justice information which has been made available to a research program may not be used to the detriment of individuals to whom such information relates.

(2) Criminal justice information which has been made available to a research program may not be used for any other purpose, nor may such information be used for any research program other than that authorized by the commission, its agent or authorized representative.

(f) A research program requesting access to criminal justice information shall, prior to authorization of access, execute a nondisclosure agreement approved by the commission, its agent or authorized representative and post a bond in the amount of five hundred dollars with the commission, which shall be subject to forfeiture in the event that any of the requirements of this section have been violated.

(g) Authorization of access to criminal justice information under this section shall be subject to the following conditions:

(1) The commission, its agent or authorized representative shall have the right to fully monitor any research program to assure compliance with the requirements of this section.

(2) The commission, its agent or authorized representative shall have the right to examine and verify all data generated by the research program, and if a material error or omission is found to have occurred, to order that the data not be released or used for any purpose unless corrected to the satisfaction of the commission, its agent or authorized representative.

(h) Each criminal justice agency shall be responsible for the formulation of methods and procedures which assure compliance with the requirements of this section with respect to the use of criminal justice information for purposes of any program of behavioral or other research, whether such programs are conducted by a criminal justice agency or by any other agency or individual. (Eff. 10/09/72, Reg. 44; am / / , Reg. 45)

Authority: AS 12.62.010
AS 12.62.030(b)

ARTICLE 4. PURGING OF CRIMINAL JUSTICE INFORMATION

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100. Purging of Criminal Offender Record Information
110. Purging of Intelligence, Analytical and Investigatory Records
120. Notification of Purging and Requests for Compliance
130. Formulation of Procedures

6 AAC 60.100. PURGING OF CRIMINAL OFFENDER RECORD INFORMATION. (a) Criminal offender record information shall be purged under any of the following circumstances:

(1) Upon legal termination of an arrest for a criminal offense in favor of the arrestee, all criminal offender record information collected and stored in an electronic, computer retrieval, criminal justice information system as a result of that arrest, except fingerprint classifications which may be retained only for identification purposes, shall be closed and not reopened for any reason. In any event, all criminal offender record information collected and stored in a criminal justice information system as a result of an arrest, except fingerprint classifications which may be retained only for identification purposes, shall be closed 180 days after the date of arrest and may be reopened only if a criminal proceeding is still pending as a result of that arrest and only then for an equal period pending final disposition of the criminal proceeding. Upon formal application of the arrested individual, made within one year of final disposition of the criminal offense, a copy of these records shall be forwarded to that individual. At the end of one year from final disposition, these records shall be expunged.

(2) Where an individual has been convicted of an offense which would in this state be a felony, and for a period of ten years:

(A) has not been imprisoned after conviction for that offense in this or any other jurisdiction in the United States;

(B) has not been subject to the control of parole or probation authorities in this or any other jurisdiction in the United States;

(C) has not been convicted in this or any other jurisdiction in the United States by a court of competent jurisdiction of an offense which would in this state be an offense the penalty for which denotes criminality;

and is not currently under indictment for, or otherwise charged with a criminal offense, or the subject of an arrest warrant, by any criminal justice agency in this or any other jurisdiction in the United States, all criminal offender record information relating to that individual in any electronic, computer retrieval, criminal justice information system shall be closed. Where no conviction results, periods of elapsed

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time while the individual was under indictment for, or otherwise charged with, a crime, or the subject of an arrest warrant, shall be included in the computation of the ten-year period provided for in this paragraph. Closing of records under this paragraph shall occur at least annually.

(3) Where an individual has been convicted of an offense which would in this state be a misdemeanor, and for a period of five years:

(A) has not been imprisoned after conviction for that offense in this or any other jurisdiction in the United States;

(B) has not been subject to the control of parole or probation authorities in this or any other jurisdiction in the United States;

(C) has not been convicted in this or any other jurisdiction in the United States by a court of competent jurisdiction of an offense which would in this state be an offense the penalty for which denotes criminality;

and is not currently under indictment for, or otherwise charged with a criminal offense, or the subject of an arrest warrant, by any criminal justice agency in this or any other jurisdiction in the United States, all criminal offender record information relating to that individual in any electronic, computer retrieval, criminal justice information system shall be closed. Where no conviction results, periods of elapsed time while the individual was under indictment for, or otherwise charged with, a crime, or the subject of an arrest warrant, shall be included in the computation of the ten-year period provided for in this paragraph. Closing of records under this paragraph shall occur at least annually.

(b) Records closed under this section shall be held in confidence and shall not be made available for dissemination, release or communication by any individual or agency except as follows, and then only for such time and to such extent as may be necessary for the purposes described:

(1) where necessary for in-house custodial activities of the recordkeeping agency or for the regulatory responsibilities of the commission;

(2) where the information is to be used for statistical compilations or research programs, in which the individual's identity is not disclosed and from which it is not ascertainable;

(3) where the individual to whom the information relates seeks to exercise rights of access and review under sec. 80 of this chapter;

(4) where necessary to permit an adjudication of any claim by the individual to whom the information relates that it is misleading, inaccurate or incomplete, pursuant to AS 12.62.030(c) and (f); and

(5) where a statute of this state specifically requires inquiry into criminal offender record information beyond the limitations of this section.

(c) Whenever criminal offender record information has been closed in accordance with this section, except when information has been closed under (a)(1) of this section, and the individual to whom the information relates is subsequently arrested for a crime, his records may be reopened during the subsequent investigation, prosecution and disposition of that offense. If the arrest does not terminate in a conviction, the records shall again be closed. If a conviction does result, the records may remain open and available for dissemination and usage until the requirements of this section are again satisfied.

(d) Where the laws or regulations of another jurisdiction in the United States require the closing or expunging of criminal offender record information, and where criminal offender record information has been supplied to criminal justice agencies in this state, that criminal offender record information shall be expunged or closed as required. Information shall not be expunged or closed under this subsection until the commission or a criminal justice agency in this state has received proper notification from another jurisdiction that expunging or closing is required under the laws or regulations of that other jurisdiction. Notice in writing over the signature of an authorized official of the other jurisdiction constitutes proper notification under this subsection.

(e) Where the commission, its agent or authorized representative orders the alteration of criminal offender record information, that order may include a requirement that the information be expunged or closed and treated in accordance with the requirements of this section.

(f) Where any statute or valid administrative regulation of this state, or the judgment of any court of competent jurisdiction in this state, requires the purging of criminal offender record information, that information shall be expunged, closed, or returned to the individual, as the statute, regulation or judgment may require.

(g) The requirements of this section impose no obligation upon criminal justice agencies to retain records beyond that time which may otherwise be provided by statute or valid administrative regulation. (Eff. 10/09/72, Reg. 44; am / /73, Reg. 45)

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Authority: AS 12.62.010
AS 12.62.030(c)(f)
AS 12.62.040(a)

6 AAC 60.110. PURGING OF INTELLIGENCE, ANALYTICAL AND INVESTIGATIVE RECORDS. Upon termination of a police investigation in favor of an individual or an arrest for a criminal offense in favor of the arrestee, information collected and stored under sec. 20(6) of this chapter, except information indicating that an individual may have a disabling medical condition which may require immediate attention or treatment, shall be closed. At the end of one year from the favorable termination of a police investigation or the final disposition of a criminal offense in favor of the arrestee, these records shall be expunged. In any event information collected and stored under sec. 20(6) of this chapter may not be retained for a period longer than five years, and shall be expunged thereafter. (Eff. 10/09/72, Reg. 44; am / /73, Reg. 45)

Authority: AS 12.62.010
AS 12.62.040(a)

6 AAC 60.120. NOTIFICATION OF PURGING AND REQUESTS FOR COMPLIANCE. (a) Each criminal justice agency shall promptly furnish notice to the commission of any criminal justice information which has been expunged, closed or reopened under secs. 100 and 110 of this chapter, including notice of the specific provisions under which the designation was made.

(b) Each criminal justice agency may periodically, but shall at least annually, furnish notice that criminal justice information has been expunged, closed or reopened under secs. 100 and 110 of this chapter to criminal justice agencies in this state with custody or control of that category of criminal justice information.

(c) Each criminal justice agency which has previously released or communicated criminal justice information, which has been expunged, closed or reopened under secs. 100 and 110 of this chapter, to any law enforcement agency, both within and outside this state, shall promptly furnish notice to those agencies that the information has been expunged, closed or reopened.

(d) When furnishing the notice required under (c) of this section a criminal justice agency shall at the same time request the law enforcement agency to expunge or close, as appropriate, criminal justice information which has previously been released or communicated to the agency, but which has been expunged or closed under secs. 100 and 110 of this chapter. Compliance with this request to expunge or close criminal justice information shall be verified through a request made of the law enforcement agency to furnish the criminal justice agency with an updated record. If a law enforce-

ment agency refuses to comply with a request to expunge or close criminal justice information which has been released or communicated to it, no further criminal justice information may be released or communicated to it by any criminal justice agency. (Eff. 10/09/72, Reg. 44; am / /73, Reg. 45)

Authority: AS 12.62.010
AS 12.62.030(c)
AS 12.62.040(a)
AS 12.62.050(a)

6 AAC 60.130. FORMULATION OF PROCEDURES. (a) Each criminal justice agency shall formulate methods and procedures to assure its continuing compliance with the requirements of this chapter. The commission may require any modifications or additions to those methods and procedures which it finds necessary for full and prompt compliance with this chapter.

(b) Where the commission finds that any public agency in this state has wilfully or repeatedly violated the requirements of AS 12.62 or this chapter the commission will, where other statutory provisions permit, prohibit the dissemination release or communication of criminal justice information to that agency, for periods and under conditions that the commission deems appropriate. (Eff. 10/09/72, Reg. 44; am / / 73, Reg. 45)

Authority: AS 12.62.010
AS 12.62.030(c)(f)
AS 12.62.040(a)

ARTICLE 5. GENERAL PROVISIONS

Section
140. Definitions

6 AAC 60.140. DEFINITIONS. In this chapter, unless otherwise provided:

(1) "close" means the retention of files, records or information recorded or stored in a criminal justice information system subject to such restrictions on access and dissemination as are required by this chapter;

(2) "commission" means the Governor's Commission on the Administration of Justice established under AS 44.19.746 - AS 44.19.758;

(3) "criminal justice agency" means an agency in this state with custody or control of criminal justice information through access authorized under sec. 60 of this chapter;

(4) "criminal justice information" means

information concerning an individual, collected and stored in a criminal justice information system, which is indexed under the individual's name or retrievable by reference to the individual by name or otherwise;

(5) "criminal justice information system" means an electronic, computer retrieval system, including the equipment, facilities, procedures, agreements, and organizations related to a system funded in whole or in part by the Law Enforcement Assistance Administration, for the collection, processing, or dissemination of criminal justice information;

(6) "criminal offender record information" means information, including records and data, compiled by criminal justice agencies and stored in an electronic, computer retrieval, criminal justice information system for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, rehabilitation and release. Such information is restricted to that stored in or on an electronic, computer retrieval system as the result of the initiation of criminal proceedings or of any consequent proceedings. It does not include intelligence, analytical and investigative reports and files, nor statistical records and reports in which individuals are not identified and from which their identities are not ascertainable;

(7) "criminal offense" means an offense the penalty for which denotes criminality;

(8) "expunge" means the physical destruction of files, records or information recorded or stored in a criminal justice information system;

(9) "law enforcement" means any activity relating to crime prevention, control or reduction, or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control or reduce crime or to apprehend criminals, and the activities and efforts of prosecution agencies, courts, public defender agencies, correctional institutions, and probation or parole agencies;

(10) "law enforcement agency" means a public agency which performs as one of its principal functions activities pertaining to law enforcement; and

(11) "purge" means both close and expunge;
(Eff. 10/09/72, Reg. 44; am / /73, Reg. 45)

Authority: AS 12.62.010
AS 12.62.070

ARTICLE 11. RESTORATION OF CIVIL RIGHTS

Article 11, consisting of sections 13-1741 to 13-1745, added by Laws 1970, Ch. 221, effective Aug. 11, 1970.

Cross References
Restoration of civil rights following criminal conviction, see Rules Cr.Proc. Rule 29.1 et seq.

§ 13-1741. Definition

In this article, unless the context otherwise requires:

1. "Civil rights" means all the civil rights conferred on a person by the constitution and laws of this state and shall include the civil rights referred to in article 7, section 2 of the constitution of Arizona and § 13-1653 of this title. Added Laws 1970, Ch. 221, § 1.

Reviser's Note:
The section heading "Definitions" was changed to "Definition" pursuant to authority of § 41-1304.02.

1. In general
City courts and justice of the peace courts have no jurisdiction to rule on either a petition for restoration of civil rights or a motion to withdraw a guilty plea or to set aside a verdict pursuant to the provisions of section 13-1741 et seq. Op.Atty.Gen.No.72-19-L.

§ 13-1742. Persons completing probation

A. A person whose period of probation has been completed may have any civil rights which were lost or suspended by his felony conviction restored by the judge who discharges him at the end of the term of probation.

B. Upon proper application, a person who has been discharged from probation prior to the adoption of this article may have any civil rights which were lost or suspended by his felony conviction restored by the superior court judge by whom the person was sentenced or his successors in office from the county in which he was originally convicted. The clerk of such superior court shall have the responsibility for processing the application upon request of the person involved or his attorney. The superior court shall cause a copy of the application to be served upon the county attorney. Added Laws 1970, Ch. 221, § 1, as amended Laws 1971, Ch. 159, § 1.

§ 13-1743. Applications by persons discharged from prison

A. Upon proper application, a person who has received an absolute discharge from imprisonment may have any civil rights which were lost or suspended by his conviction restored by the superior court judge by whom the person was sentenced or his successors in office from the county in which he was originally sentenced.

B. A person who is subject to the provisions of subsection A may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the director of the department of corrections. The clerk of the superior court that sentenced the applicant shall have the responsibility for processing applications for restoration of civil rights upon request of the person involved, his attorney or a representative of the state department of corrections. The superior court shall cause a copy of the application to be served upon the county attorney. Added Laws 1970, Ch. 221, § 1, as amended Laws 1971, Ch. 159, § 2.

§ 13-1761. Entry on records; stipulation; court order

A. Any person who is wrongfully arrested, indicted or otherwise charged for any crime may petition the superior court for entry upon all court records, police records and any other records of any other agency relating to such arrest or indictment a notation that the person has been cleared.

B. After a hearing on the petition, if the judge believes that justice will be served by such entry, the judge shall issue the order requiring the entry that the person has been cleared on such records, with accompanying justification therefor, and shall cause a copy of such order to be delivered to all law enforcement agencies and courts. The order shall further require that all law enforcement agencies and courts shall not release copies of such records to any person except upon order of the court.

C. Any person who has notice of such order and fails to comply with the court order issued pursuant to this section shall be liable to the person for damages from such failure. Added Laws 1973, Ch. 126, § 3. As amended Laws 1976, Ch. 154, § 2.

§ 13-1744. Setting aside judgment of convicted person upon discharge; making of application; release from disabilities except pleadings of conviction in prosecution for subsequent offense

Every person convicted of a criminal offense other than a violation of the provisions of title 28, chapter 6,1 or a violation of any local ordinance relating to stopping, standing or operation of a vehicle, but nevertheless including a violation of §§ 28-661, 28-692, 28-692.01, 28-692.02, 28-693 or any local ordinance relating to the same subject matter of such sections, may upon fulfillment of the conditions of probation or sentence and discharge by the court, apply to the judge, justice of the peace or magistrate who pronounced sentence or imposed probation or such judge, justice of the peace or magistrate's successor in office to have the judgment of guilt set aside. The convicted person shall be informed of this right at the time of discharge. The application to set aside the judgment may be made by the convicted person, by his attorney or probation officer authorized in writing. If the judge, justice of the peace or magistrate grants the application, the judge, justice of the peace or magistrate shall set aside the judgment of guilt, dismiss the accusations or information and order that the person be released from all penalties and disabilities resulting from the conviction except that the conviction may be pleaded and proved in any subsequent prosecution of such person for any offense as if the judgment of guilt had not been set aside. Added Laws 1976, Ch. 111, § 10.

TITLE 39

PUBLIC RECORDS, PRINTING AND NOTICES

§ 39-121.01. Copies; printouts or photographs of public records

In this article, unless the context otherwise requires:

1. "Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.

2. "Public body" means the state, any county, city, town, school district, political subdivision or tax-supported district in the state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by funds from the state or any political subdivision thereof, or expending funds provided by the state or any political subdivision thereof.

3. All officers and public bodies shall maintain all records reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by funds from the state or any political subdivision thereof.

4. Each public body shall be responsible for the preservation, maintenance and care of that body's public records and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to §§ 41-1344, 41-1347 and 41-1351.

5. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours. The custodian of such records shall furnish such copies, printouts or photographs and may charge a reasonable fee if the facilities are available, subject to the provisions of § 39-122. The fee shall not exceed the commercial rate for like service except as otherwise provided by statute.

G. If the custodian of a public record does not have facilities for making copies, printouts or photographs of a public record which a person has a right to inspect, such person shall be granted access to the public record for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the public record is in the possession, custody and control of the custodian thereof and shall be subject to the supervision of such custodian. Added Laws 1975, Ch. 147, § 1. As amended Laws 1976, Ch. 104, § 17.

For effective date of Laws 1976, Ch. 104, see note following § 41-1331.

Cross References

Attorney general's opinions and reports, distribution, see § 41-194.

Library References

Records ⇐15.

C.J.S. Records §§ 38, 40.

§ 39-121.02. Action upon denial of access; expenses and attorney fees; damages

A. Any person who has requested to examine or copy public records pursuant to the provisions of this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body.

B. If the court determines that a person was wrongfully denied access to or the right to copy a public record and if the court finds that the custodian of such public record acted in bad faith, or in an arbitrary or capricious manner, the superior court may award to the petitioner legal costs, including reasonable attorney fees, as determined by the court.

C. Any person who is wrongfully denied access to public records pursuant to the provisions of this article shall have a cause of action against the officer or public body for any damages resulting therefrom. Added Laws 1975, Ch. 147, § 1.

ARTICLE 3. RECORDS

§ 38-421. Stealing, destroying, altering or secreting public record; penalty

A. An officer having custody of any record, map or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who steals, wilfully destroys, mutilates, defaces, alters, falsifies, removes or secretes the whole or any part thereof, or who permits any other person so to do, shall be punished by imprisonment in the state prison for not less than one nor more than fourteen years.

B. A person not an officer who is guilty of the conduct specified in subsection A of this section shall be punished by imprisonment in the state prison for not to exceed five years or in the county jail for not to exceed one year, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment.

§ 13-1273. Access to records

No statement, photograph or fingerprint required by this article shall be made available to any person other than a duly elected or appointed law enforcement officer.

§ 41-1750. Criminal identification section; duties

A. There shall be a criminal identification section within the department of public safety.

B. The criminal identification section shall:

1. Procure and maintain records of photographs, descriptions, fingerprints, dispositions and such other information as may be pertinent to all persons who have been arrested for or convicted of a public offense within the state.

2. Collect information concerning the number and nature of offenses known to have been committed in this state, of the legal steps taken in connection therewith, and such other information as shall be useful in the study of crime in the administration of justice.

3. Cooperate with the criminal identification bureaus in other states and with the appropriate agency of the federal government in the exchange of information pertinent to violators of the law. In addition, the criminal identification section shall provide for the rapid exchange of information concerning the commission of crime and the detection of violators of the law, between the law enforcement agen-

cies of this state and its political subdivisions and the law enforcement agencies of other states and of the federal government.

4. Furnish assistance to peace officers throughout the state in crime scene investigation for the detection of latent fingerprints, and in the comparison thereof.

5. Provide information from its records to law enforcement agencies of the state or its political subdivisions upon request by the chief officer of such agency or his authorized representative. Such information shall be used only for purposes of law enforcement.

6. Provide information from its records to courts, prosecutors or correctional agencies of the state or its political subdivisions upon request by the chief officer of such agency or his authorized representative. Such information shall be used only for purposes of the criminal justice system.

7. Provide information from its records relating to convictions for public offenses to nonlaw enforcement agencies of the state or its political subdivisions upon request by the chief officer of such agency or his authorized representative, for the purpose of evaluating the fitness of prospective employees of such agency. Such information shall be used only for the purpose of such evaluation.

8. Provide information from its records relating to convictions for public offenses to licensing and regulatory agencies of the state or its political subdivisions upon request by the chief officer of such agency or his authorized representative, for the purpose of evaluating the fitness of prospective licensees. Such information shall be used only for the purpose of such evaluation.

9. Provide information from its records relating to arrests or convictions for public offenses to the subject of such information, or to his attorney at the request of the subject, and when accompanied by proper identification.

C. The chief officers of law enforcement agencies of the state or its political subdivisions shall provide to the criminal identification section such information concerning crimes and persons arrested for or convicted of public offenses within the state as the chief of the criminal identification section, with the approval of the director, shall deem useful for the study or prevention of crime and for the administration of justice.

D. Any person who releases or procures the release of information held by the criminal identification section other than as provided by this section, or who uses such information for a purpose other than as provided by this section, is guilty of a misdemeanor.

E. The chief of the criminal identification section may, with the written approval of the director and in the manner prescribed by law, remove and destroy such records as he determines are no longer of value in the detection or prevention of crime.

F. The chief of the criminal identification section, subject to the approval of the director, shall make and issue rules and regulations relating to the procurement and dissemination of information, in the manner prescribed by law.

G. All nonlaw enforcement agencies of the state or its political subdivisions may establish by rule, regulation or ordinance the need for fingerprint or background investigations for purposes of employment or licensing and may, thereafter, utilize the criminal identification section of the department of public safety in accordance with subsection F.

Added as § 41-1650 by Laws 1968, Ch. 209, § 1, eff. July 1, 1969. As amended Laws 1972, Ch. 39, § 1, eff. April 6, 1972.

§ 41-1751. Reporting court dispositions to department of public safety

Every magistrate, or judge of a court, or clerk of a court of record who is responsible for court records in this state shall furnish to the criminal identification section of the department of public safety information pertaining to all court dispositions of criminal matters, where incarceration or fingerprinting of the person occurred, including guilty pleas, convictions, acquittals, probations granted and pleas of guilty to reduced charges within ten days of the final disposition. Such information shall be submitted on a form and in accordance with rules approved by the supreme court of the state.

Added Laws 1974, Ch. 17, § 1.

5-831. Appeal from director's action concerning data processing needs. — If any state agency, department, institution or program shall be aggrieved by the action of the Director of the State Administration Department [Director of the Department of Finance and Administration] as authorized in this Act [§§ 5-830, 5-831], the head of such agency, department, institution or program may appeal therefrom to the Governor, and the Governor shall, after holding a hearing thereon, issue his findings and recommendations with respect to the data processing needs of the agency and of the most feasible means of meeting such needs and shall notify the agency of his findings and recommendations in writing. The findings of the Governor shall be final and shall be binding on the state agency. Provided, nothing herein shall prevent a state agency from making subsequent or additional requests for data processing services or for the expansion or addition of data processing services or equipment to meet new or additional needs of the agency, in the manner authorized in this Act. [Acts 1971, No. 94, § 2, p. 267.]

CHAPTER 11

CRIMINAL JUSTICE AND HIGHWAY SAFETY INFORMATION CENTER

5-1101. Criminal justice and highway safety information center — Creation — Appointment of administrator. — There is hereby created a Criminal Justice and Highway Safety Information Center, under the supervision of a Supervisory Board established by this Act [§§ 5-1101—5-1115], and the Department of Public Safety. This Center shall consist of an Administrator of Criminal Justice and Highway Safety Information and such other staff under the general supervision of the Administrator as may be necessary to administer the services of this Act, subject to the approval of funds authorized by the General Assembly. The Supervisory Board shall name the Administrator of the Center with the approval of the Director of the Department of Public Safety. [Acts 1971, No. 286, § 1, p. 674; 1975, No. 742, § 1, p. —.]

5-1102. Maintenance and operation of criminal justice and highway safety information system — Other duties of center — Availability of criminal record. — This Center shall be responsible for providing for the maintenance and operation of the computer-based Criminal Justice and Highway Safety Information System. The use of this System is restricted to serving the informational needs of police, courts, correction and highway safety agencies through a communications network connecting state, county, and local authorities to a centralized state depository of information. The information to be stored in the Criminal Justice and Highway Safety Information Center under the authority of this Act [§§ 5-1101—5-1115] shall be restricted to records of outstanding warrants for arrest, felony informations and indictments pending in Circuit Court, misdemeanor informations and indictments to the extent provided in this Section pending in Municipal and Circuit Courts, commitments to the penitentiary and other correctional agencies, felony convictions, persons on felony parole or probation, stolen property, moving traffic violations, traffic accidents, drivers licenses, vehicle registration, records to prevent misidentification of persons and convictions for the following specified misdemeanors:

(a) All misdemeanor crimes wherein violence is an element of the offense.

(b) All misdemeanor crimes involving the theft of property.

(c) All misdemeanor crimes involving the use, abuse, misuse or possession of dangerous drugs or narcotics.

(d) Driving while under the influence of drugs or intoxicants.

It is the intent of the General Assembly in this legislation that the Center shall maintain only the specified records on persons and shall not maintain any additional records on persons without specific statutory authorization from the General Assembly.

The Center shall collect data and compile statistics on the nature and extent of crime and highway safety problems in Arkansas and compile other data related to planning for and operating criminal justice and highway safety agencies, provided that such statistics do not identify persons. The Center shall also periodically publish statistics that do not identify persons and report such information to the Governor, the General Assembly, Federal, State and local criminal agencies, and the general public.

The Center, at the direction of the Supervisory Board, is hereby authorized to design and administer a Uniform Crime Reporting program, uniform records systems, and a criminal offender tracking program (Offender Based Transaction Statistics), to be used by criminal justice agencies for reporting the authorized information under this Act. The Center shall also provide all standard forms and provide for the instruction of participants in the use of such forms and related standard record systems.

The Center shall make criminal records on person [persons] available only to criminal justice agencies in their official capacity, to regulatory agencies with specific statutory authority of access, and to any person or his attorney, who has reason to believe that a criminal history record is being kept on him, or wherein the criminal defendant is charged with either a misdemeanor or felony. Upon the application of the person or his attorney, it shall be mandatory, upon proper and sufficient identification of the person, for the Criminal Justice and Highway Safety Information Center to make available to said person or his attorney any records on the person making said application. The Supervisory Board shall establish regulations and policies to carry out the review and challenge procedures in accordance with this Act. [Acts 1971, No. 286, § 2, p. 674; 1975, No. 742, § 2, p. —.]

5-1103. Supervisory board — Duties. — There is hereby created a Supervisory Board for the Criminal Justice and Highway Safety Information Center. The duties and responsibilities of this Board are to:

(a) Maintain and operate the Criminal Justice and Highway Safety Information Center.

(b) Provide that the information obtained by this Act [§§ 5-1101—5-1115] shall be restricted to the items specified in this Act and shall so administer the Center so as not to accumulate any information or distribute any information that is not specifically approved in this Act.

(c) Provide for adequate security safeguards to ensure that the data available through this system is used only by properly authorized persons and agencies.

(d) Provide for uniform reporting and tracking systems to report data authorized by this Act. Standard forms and procedures for reporting such authorized data under this Act shall be prescribed by the Board.

(e) Establish regulations and policies as may be necessary for the efficient and effective use and operation of the Information Center under the limitations imposed by the terms of this Act.

(f) Provide for the reporting of authorized information under the limitations of this Act to the United States Department of Justice under its national system of crime reporting.

(g) Provide for research and development activities that will encourage the application of advanced technology, including the development of prototype systems and procedures, the development of plans for the implementing of these prototypes, and the development of technological expertise which can provide assistance in the application of technology in record and communication systems in Arkansas. [Acts 1971, No. 286, § 3, p. 674; 1975, No. 742, § 3, p. —.]

5-1104. Composition of board — Expenses. — The Supervisory Board shall consist of twelve (12) members:

(a) The Attorney General or one [1] of his assistants.

(b) The Chief Justice of the Supreme Court or his designated agent.

(c) A member designated by the Arkansas Association of Prosecuting Attorneys.

(d) A member designated by the Arkansas Sheriffs Association.

(e) A member designated by the Arkansas Association of Municipal Judges.

(f) A member designated by the President of the Arkansas Bar Association who is regularly engaged in criminal defense work.

(g) A citizen of the State of Arkansas to be appointed by the Governor.

(h) A member of the General Assembly appointed by the Governor.

(i) A member designated by the Arkansas Municipal Police Association.

(j) The Director of the Department of Corrections or his designated agent.

(k) A member designated by the Arkansas Association of Chiefs of Police.

The Director of the Department of Public Safety or a member of his staff designated by him, shall serve as an ex officio member.

No member shall continue to serve on the Supervisory Board when the member no longer officially represents the function for which the member was appointed, except the citizen appointed by the Governor, who shall serve for a period of four (4) years.

Members of the Board shall serve without compensation but within the limits of funds available, shall be entitled to reasonable reimbursement for all necessary expenses incurred in the discharge of his duties. [Acts 1971, No. 286, § 4, p. 674; 1975, No. 742, § 4, p. —.]

5-1105. Board meetings — Quorum — Removal of member — Rules and regulations. — The Supervisory Board shall meet at such times and places as it shall deem appropriate. A majority of the Board shall constitute a quorum for transacting any business of the Board.

The Board may, for cause, remove any Board member and shall notify the Governor of such removal and reason therefor.

The Board shall establish its own rules and regulations for performance of the responsibilities charged to the Board herein. [Acts 1971, No. 286, § 5, p. 674; 1975, No. 742, § 5, p. —.]

5-1106. Data —Control of — Continued use of existing facilities, systems personnel, networks and operations. — All data files and computer programs making up the Criminal Justice and Highway Safety Information System, in accordance with this Act [§§ 5-1101 — 5-1115], shall be under the control and jurisdiction of the Supervisory Board.

The Administrator and the Supervisory Board of the Center shall make arrangements for the continued use of existing State computer facilities, computer systems and programming personnel, communications networks wherever feasible and practical. [Acts 1971, No. 286, § 6, p. 674; 1975, No. 742, § 6, p. —.]

5-1107. Duty to furnish data. — It shall be the duty of all Sheriffs, Chiefs of Police, City Marshals, Correction officials, Prosecuting Attorneys, Court Clerks, and other State, county and local officials and agencies so directed to furnish the Center all data required by this Act [§§ 5-1101 — 5-1115]. Such data shall be furnished the Center in a manner prescribed by the Supervisory Board. [Acts 1971, No. 286, § 7, p. 674; 1975, No. 742, § 7, p.

5-1108. Invasion of privacy prohibited. — Nothing in this Act [§§ 5-1101 — 5-1115] shall be construed so as to give authority to any person, agency or corporation or other legal entity to invade the privacy of any citizen as defined by the General Assembly or the courts other than to the extent provided in this Act. [Acts 1971, No. 286, § 8, p. 674.]

5-1109. Duty to purge files following acquittal or dismissal of charges. — The Center shall, on or before the first day of January each year following the enactment of this Act [§§ 5-1101 — 5-1115], purge its files of all records of a person relating to a crime wherein the person has been acquitted or the charges dismissed. [Acts 1971, No. 286, § 9, p. 674.]

5-1110. Wilful release or disclosure to unauthorized person — Felony — Penalty. — Every person who shall wilfully release or disclose to any unauthorized person any information authorized to be maintained and collected under this Act [§§ 5-1101 — 5-1115] and any person who wilfully obtains said information for purposes not specified by this Act shall be deemed guilty of a felony and upon conviction shall be punished by a fine not exceeding five thousand dollars ($5,000), and by imprisonment in the state penitentiary for not exceeding three (3) years. [Acts 1971, No. 286, § 10, p. 674; 1975, No. 742, § 9, p. —.]

5-1111. Violation of law — Misdemeanor — Penalty. — Any Sheriff, Chief of Police, City Marshal, Correction official, Prosecuting Attorney, Court Clerk, or other State, county and local official who shall wilfully fail to comply with the provisions of this Act [§§ 5-1101 — 5-1115], or any regulation issued by the Supervisory Board carrying out the provisions of this Act, shall be found guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $500. [Acts 1975, No. 742, § 8, p. —.]

5-1112. Special information services agents — Duties. — To insure the accuracy, timeliness and completeness of all records and information as prescribed by this Act [§§ 5-1101 — 5-1115], the Administrator shall appoint Special Information Services Agents, who after proper and sufficient security clearances and training, shall be commissioned to do monitoring and auditing of all records and information as defined by this Act, and other duties as may be prescribed by the Supervisory Board. [Acts 1975, No. 742, § 10, p. —.]

5-1113. Criminal justice and highway safety information center — Transfer to department of public safety. — The Criminal Justice and Highway Safety Information Center, and all functions performed by the office, is hereby transferred into the Department of Public Safety, with full divisional status within the Department, effective July 1, 1975. [Acts 1975, No. 742, § 11, p. —.]

5-1114. Positions transferred to department of public safety — Tenure of employees — State compensation plan. — (a) All positions presently approved by the General Assembly for the Criminal Justice and Highway Safety Information Center are hereby transferred into the Department of Public Safety.

(b) All personnel employed by the Criminal Justice and Highway Safety Information Center are hereby granted tenure rights on and after the effective date [April 3, 1975] of this Act.

(c) Position, grade, step and anniversary dates, as established under the State's Compensation Plan, shall remain as assigned to the position of each employee on and after the effective date of this Act or as provided by the new Compensation Plan. [Acts 1975, No. 742, § 12, p. —.]

5-1115. Transfer of office equipment and supplies. — All office furniture, equipment and other paraphernalia now being utilized by the Criminal Justice and Highway Safety Information Center is hereby transferred to the Department of Public Safety. Office supplies, forms and other supplies presently maintained as inventory for the Criminal Justice and Highway Safety Information Center are hereby transferred to the Department of Public Safety. [Acts 1975, No. 742, § 13, p. —.]

12-2801. **Title of act.** — This Act [§§ 12-2801—12-2807] shall be known and cited as the "Freedom of Information Act" of 1967. [Acts 1967, No. 93, § 1, p. 208.]

12-2803. **Definitions.**—"Public records" are records made, maintained or kept by any public or governmental body, board, bureau, commission or agency of the State or any political subdivision of the State, or organization, corporation or agency, supported in whole or in part by public funds, or expending public funds.

"Public meetings" are the meetings of any bureau, commission or agency of the state, or any political subdivision of the state, including municipalities and counties, Boards of Education, and all other boards, bureaus, commissions or organizations in the State of Arkansas, except Grand Juries, supported wholly or in part by public funds, or expending public funds. [Acts 1967, No. 93, § 3, p. 208.]

12-2804. **Examination and copying of public records.**—Except as otherwise specifically provided by laws now in effect, or laws hereafter specifically enacted to provide otherwise, all state, county, township, municipal and school district records which by law are required to be kept and maintained shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records. It is the specific intent of this Section that records such as state income tax returns, medical records, scholastic records, adoption records and other similar records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this Act [§§ 12-2801—12-2807].

Reasonable access to these records and reasonable comforts and facilities for the full exercise of the right to inspect and copy such records shall not be denied to any citizen.

If the record is in active use or in storage and, therefore, not available, at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three [3] days at which time the record will be available for the exercise of the right given by this Act. [Acts 1967, No. 93, § 4, p. 208.]

12-2805. **Open public meetings.**—Except as otherwise specifically provided by law, all meetings formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts, and all boards, bureaus, commissions, or organizations of the State of Arkansas, except Grand Juries, supported wholly or in part by public funds, or expending public funds, shall be public meetings.

The time and place of each regular meeting shall be furnished to anyone who requests the information.

In the event of emergency, or special meetings the person calling such a meeting shall notify the representatives of the newspapers, radio stations and television stations, if any, located in the county in which the meeting is to be held and which have requested to be so notified of such emergency or special meetings, of the time, place and date at least two [2] hours before such a meeting takes place in order that the public shall have representatives at the meeting.

Executive sessions will be permitted only for the purpose of discussing or considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee.

Executive sessions must never be called for the purpose of defeating the reason or the spirit of the Freedom of Information Act.

No resolution, ordinance, rule, contract, regulation or motion considered or arrived at in executive session will be legal unless following the executive session, the public body reconvenes in public session and presents and votes on such resolution, ordinance, rule, contract, regulation, or motion. [Acts 1967, No. 93, § 5, p. 208.]

12-2806. **Enforcement.**—Any citizen denied the rights granted to him by this Act [§§ 12-2801—12-2807] may appeal immediately from such denial to the Pulaski Circuit Court, or to the Circuit Court of the residence of the aggrieved party, if an agency of the State is involved, or to any of the Circuit Courts of the appropriate judicial districts when an agency of a county, municipality, township or school district, or a private organization supported by or expending public funds is involved. Upon written application of the person denied the rights provided for in this Act, or any interested party, it shall be mandatory upon the Circuit Court having jurisdiction, to fix and assess a day the petition is to be heard within seven [7] days of the date of the application of the petitioner, and to hear and determine the case. Those who refuse to comply with the orders of the court shall be found guilty of contempt of court. [Acts 1967, No. 93, § 6, p. 208.]

Collateral Reference.

Court's power to determine upon government's claim of privilege whether official information contains state secrets or other matters disclosure of which is against public interest. 32 A. L. R. (2d) 391.

12-2807. **Penalty.**—Any person who wilfully and knowingly violates any of the provisions of this Act [§§ 12-2801—12-2807] shall be guilty of a misdemeanor and shall be punished by a fine of not more than $200, or 30 days in jail, or both. [Acts 1967, No. 93, § 7, p. 208.]

CHAPTER 8—INFORMATION PRACTICES

16-802. **Legislative intent.**—(a) The Arkansas General Assembly finds and declared [declares]:

(i) That the use of personal information collected, stored, or disseminated by government for purposes other than those purposes to which a person knowingly consents can seriously endanger a person's right to privacy and confidentiality.

(ii) That government information collection methods are not limited to state political subdivision boundaries and, therefore, it is necessary to establish a unified statewide program for the regulation of governmental information collection practices and to cooperate fully with other states and with agencies of the government of the United States in regulating such information collection practices.

(iii) That in order to increase participation of persons in the prevention and correction of unfair information practices, opportunity for hearing and remedies must be provided.

(iv) That in order to insure that information collected, stored and disseminated by government about persons is consistent with fair information practices while safe-guarding the interests of the persons and allowing the state and other governmental subdivisions to exercise their proper powers, a definition of rights and responsibilities must be established.

(b) The purpose of this Act [§§ 16-801—16-810] is to insure safeguards for personal privacy from government recordkeeping organizations by adherence to the following principles of information practice:

(i) There should be no personal information systems whose existence is secret.

(ii) Information should not be collected unless the need for it has been clearly established in advance.

(iii) Information should be appropriate and relevant to the purpose for which it has been collected.

(iv) Information should not be obtained by fraudulent or unfair means.

(v) Information should not be used unless it is accurate and current.

(vi) There should be a prescribed procedure for an individual to know the existence of information stored about him, the purpose for which it has been recorded, particulars about its use and dissemination, and to examine that information.

(vii) There should be a clearly prescribed procedure for an individual to correct, erase, or amend inaccurate, obsolete, or irrelevant information.

(viii) Any government organization collecting, maintaining, using, or disseminating personal information should assure its reliability and take precautions to prevent its misuse.

(ix) There should be a clearly prescribed procedure for an individual to prevent personal information collected for one [1] purpose from being used for another purpose without his consent.

(x) State and Local Government should not collect personal information except as expressly authorized by law. [Acts 1975, No. 730, § 2, p. —.]

Compiler's Notes.

The bracketed word "declares" was inserted by the compiler.

16-803. Definitions.—As used in this Act [§§ 16-801—16-810], unless the context otherwise requires, the following words and phrases shall have the meaning ascribed to them in this section:

(a) "Act" is the Arkansas Information Practices Act.

(b) "Board" is the Arkansas Information Practices Board created by this Act.

(c) "Individual" is any man, woman or child.

(d) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representatives or agent.

(e) "Personal information" is any information that by some specific means of identification, including but not limited to any name, number, description, finger or voice print or picture, and including any combination of such characters, it is possible to identify with reasonable certainty the person to whom such information pertains.

(f) "Personal information system" is any method by which personal information is collected, stored, or disseminated by any agency of this state government, or by any local government or other political subdivision of this State, but does not include any system for the collection, storage or dissemination of data specifically obtained for use by criminal justice agencies.

(g) "Responsible authority" at the State level means any office established by law as the body responsible for the collection and use of any set of data on persons or summary data. "Responsible authority" in any political subdivision means the person designated by the governing body of that political subdivision, unless otherwise provided by law. With respect to statewide systems, those involving one or more state agencies and one or more political subdivisions, "responsible authority" means the state official involved, or if more than one state official, the state official designated by the board.

(h) "File" is the point of collection of personal identifiable information.

(i) "Purge" is the physical destruction of files, records, or information.

(j) "Need to know" is the necessity of the person who wishes to collect, store, or disseminate personal information for obtaining the specific information.

(k) "Political subdivision" means all cities or counties in this State and any board, agency, or other entity of state, city, or county government except local school districts.

(*l*) "Machine-accessible" means recorded in magnetic tape, magnetic disk, magnetic drum, punched card, optically scannable paper or film, punched paper tape, or any other medium by means of which information can be communicated to data processing machines. [Acts 1975, No. 730, § 3, p. —.]

16-804. Arkansas information practices board.—(a) There is established an Information Practices Board. The Board shall be composed of the Lieutenant-Governor, who shall be Chairman of the Board; and the Director of the Department of Finance and Administration (or his designee), who shall serve ex officio; a County Judge, and a Mayor and three [3] members of the public who shall be appointed by the Governor subject to confirmation by the Senate. The first County Judge appointed and two [2] of the three [3] public members shall be appointed to one (1) year terms. Their successors and the other appointed members shall be appointed to two (2) year terms and shall serve until their successors are duly appointed and qualified.

(b) The Board shall appoint a Director and such additional staff as may be necessary to carry out its responsibilities under this Act [§§ 16-801—16-810].

(c) The Board shall meet at least once every three [3] months, and each appointed member of the Board shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of his duties.

(d) The Board shall collect and disseminate such information and acquire such technical data as may be required to carry out the purposes of this Act, including ascertainment of the routine practices and security procedures of personal information systems in the collection, storage or dissemination of personal information.

(e) The Board may require the submission of complete outlines or plans of personal information systems from responsible authorities and the submission of such reports regarding known or alleged violations of the Act or of regulations thereunder, as may be necessary for purposes of this Act.

(f) The Board shall prescribe a program of continuing and regular inspection of personal information systems in order to assure that information practices are in compliance with this Act and regulations adopted thereunder.

(g) The Board shall investigate alleged violations of this Act or of regulations adopted thereunder.

(h) The Board, pursuant to the Administrative Procedures Act [§§ 5-701—5-714], shall adopt regulations to promote security, confidentiality and privacy in personal information systems, consistent with the purpose of this Act. Without limiting the generality of this authority, such regulation shall prescribe:

(1) limits of authority and responsibility for all persons with access to personal information systems or any part thereof;

(2) methods for obtaining advice and opinions with regard to requirements of law in the regulating of security, confidentiality and privacy in personal information systems;

(3) policies and procedures to insure the security of personal information systems including the mechanics, personnel, processing of information, site design and access;

(4) standards, over and above those required by normal civil service, of conduct, employment and discipline for responsible authorities and all other persons with access to personal information systems or any part thereof;

(5) standards for the need to know to be utilized by responsible authorities in determining what types of information may be collected, stored and disseminated;

(6) standards for direct and indirect access to personal information systems;

(7) standards and procedures to assure the prompt and complete purging of obsolete, inaccurate or unnecessary personal information from personal information systems;

(8) a continuing program of external and internal auditing and verification to assure the accuracy and completeness of personal information;

(9) standards governing interagency use of files as long as such use is not in violation of other statutory requirements, this act or regulations adopted thereunder;

(10) standards for exempting certain files from the coverage of this Act, such as telephone number lists, mailing lists, etc., intended for normal office use.

(i) The Board shall have the duty to represent the State of Arkansas in any and all matters pertaining to plans, procedures or negotiations for interstate compacts or other governmental arrangements relating to the regulation of personal information systems or otherwise relating to the protection of the person's right of privacy.

(j) The Board shall have the authority to accept, receive and administer on behalf of the State any grants, gifts, loans or other funds made available to the State from any source for purposes of this Act or other related privacy protection activities, surveys or programs, subject to the several statutes and procedures of this State.

(k) On or before December 1 of each year, the Board shall prepare a report, or update of the previous year's report, to the Legislature and the Governor. Summaries of the report shall be available to the public at a nominal cost. The report shall contain to the extent feasible at least the following information:

(1) a complete listing of all personal information systems which are kept by the state, its local governments and political subdivisions, a description of the information contained therein, and the reason that the information is kept;

(2) a statement of which types of personal information in the Board's opinion are public records as defined by law and which types of information are confidential;

(3) the title, name, and address of the responsible authority for the system and for each file and associated procedures:

(i) the categories and number of persons in each category on whom information is or is expected to be maintained;

(ii) the categories of information maintained, or to be maintained, indicating which categories are or will be stored in machine accessible files;

(iii) the categories of information sources;

(iv) a description of all types of use made of information, indicating those involving machine accessible files, and including all classes of users;

(v) the responsible authority's and the Board's policies and practices regarding information storage, duration of retention of information, and disposal thereof. [;]

(vi) a description of the provisions for maintaining the integrity of the information pursuant to this Act and the regulations adopted thereunder; and

(vii) the procedures pursuant to this Act and the regulations adopted thereunder whereby a person can (a) be informed if he is the subject of information in the system, (b) gain access to the information, and (c) contest its accuracy, completeness, pertinence, and the necessity for retaining it; and

(4) an analysis of the administrative and cost considerations for providing continuing and regular inspection of all information systems which are or could reasonably come under the jurisdiction of this Act to assure that information practices are in compliance with this Act and regulations adopted thereunder. [;]

(5) any recommendations concerning appropriate legislation. [Acts 1975, No. 730, § 4, p. —.]

The words "or his designee" inclosed in parentheses so appeared in the act. The bracketed semicolons were inserted by the compiler.

Section to Section References.

This section is referred to in § 16-806.

16-805. Local government [Effective April 1, 1977].—(a) The Board shall exercise all powers and perform all duties as provided for in the Act [§§ 16-801—16-810] with regard to any personal information system operated, conducted or maintained by such local government, other political subdivision or combination thereof.

(b) At the request of any local government, other political subdivision or combination thereof in this State, the Board may adopt regulations to: permit the establishment of a local information practices board; govern the operation of such local information practices board; and define the rule-making and review authority of such local information practices board. Such local information practices board shall be operated by and at the expenses of such local government, other political subdivision or combination thereof.

(c) Such local government, other political subdivision or combination thereof may request that the Board dissolve a local information practices board. [Acts 1975, No. 730, § 5, p. —.]

Compiler's Notes.

Section 13 of Acts 1975, No. 730 provided that this section should become effective April 1, 1977.

16-806. Rights of subjects of information [Effective April 1, 1976].—The rights of persons on whom the information is stored or to be stored and the responsibilities of the responsible authority shall be as follows:

(a) The purpose for which personal information is collected and used or to be collected and used shall be filed in writing by the responsible authority with the Board and shall be a matter of public record pursuant to Section 4 [§ 16-804].

(b) A person asked to supply personal information shall be informed of all intended uses and of the purpose of all intended uses of the requested information.

(c) A person asked to supply personal information shall be informed whether he may refuse or is legally required to supply the requested information. He shall be informed of any known consequence arising from his supplying or refusing to supply the personal information.

(d) Information shall not be used for any purpose other than as stated in clause (a) of this section unless (1) the responsible authority first makes an additional filing in accordance with clause (a); (2) the Legislature gives its approval by law; or (3) the persons to whom the information pertains give their informed consent.

(e) Upon request to a responsible authority, a person shall be informed whether he is the subject of stored information and if so, and upon his additional request, shall be informed of the content and meaning of the data recorded about him and shown the information without any charge to him. For a six [6] month period after such disclosure, the responsible authority may charge a fee equal to their actual cost of making the disclosure for additional disclosures. This clause does not apply to information about persons which is defined by statute as confidential or to records relating to the medical or psychiatric treatment of an individual and nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(f) A person shall have the right to contest the accuracy or completeness of information about him. To institute a contest, the person shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within thirty (30) days excluding Saturdays, Sundays, and holidays correct the information if the data is found to be inaccurate or incomplete and attempt to notify past recipients who have received the inaccurate or incomplete data within the preceding two [2] years of the inaccurate or incomplete information, or notify the person of disagreement. The determination of the responsible authority is appealable in accordance with the Administrative Procedures Act [§§ 5-701—5-714]. Information in dispute shall not be disclosed except under conditions of demonstrated need and then only if the person's statement of disagreement is included with the disclosed information.

(g) A person has the right to be free from the storage and continued collection of personal information no longer utilized for any valid purpose.

(h) A person has the right to be free from the collection, storage or dissemination of any personal information collected from anonymous sources except as exempted by the Board or statutes. [Acts 1975, No. 730, § 6, p. —.]

16-808. **Penalties.**—Any person who willfully violates the provisions of this Act [§§ 16-801—16-810] or any rules and regulations promulgated thereunder is guilty of a misdemeanor and additionally shall be liable for a mandatory civil penalty of at least five hundred dollars ($500) to be recovered by the state or political subdivision by whom the individual is employed. Any person damaged in his person or property by reason of an individual's willful violation of any of the provisions of this Act may recover actual and punitive damages from such individual together with a reasonable attorney's fee. [Acts 1975, No. 730, § 8, p. —.]

16-809. **Common law.**—No existing statute or common law shall be limited or reduced by this Act [§§ 16-801—16-810]. [Acts 1975, No. 730, § 9, p. —.]

16-810. **Relation to other acts.**—Nothing in this Act shall be construed to restrict or modify that right of access to public records as provided by Section 24 of Act 142 of 1949 (Ark. Stats. 75-124) and Act 78 of 1953 (Ark. Stats. 16-601). [Acts 1975, No. 730, § 10, p. —.]

43-1231. Expunging record of first offenders — "Expunge" defined. — For the purposes of this Act [§§ 43-1231 — 43-1235], the term "expunge" shall mean an entry upon the official records kept in the regular course of business by law enforcement agencies and judicial officials evidencing the fact said records are those relating to first offenders as so determined by the court; that such records shall be sealed, sequestered, treated as confidential and only available to law enforcement and judicial officials; and further signifying that the defendant was completely exonerated of any criminal purpose and said disposition shall not affect any civil right or liberties of said defendant.

The term "expunge" shall not mean the physical destruction of any official records of law enforcement agencies or judicial officials. [Acts 1975, No. 346, § 1, p. 881.]

43-1232. Probation of defendant — Discretion of judge in use of procedure. — Whenever an accused enters a plea of guilty or nolo contendere prior to an adjudication of guilt, the judge of the circuit or municipal court (criminal or traffic division) may in the case of a defendant who has not been previously convicted of a felony, without entering a judgment of guilt and with the consent of the defendant, defer further proceeding and place the defendant on probation for a period of not less than one (1) year, under such terms and conditions as may be set by the court. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

Nothing herein shall require or compel any court of this state to establish first offender procedures as provided in this Act [§§ 43-1231 — 43-1235] nor shall any defendant be availed the benefit of this Act as a matter of right. [Acts 1975, No. 346, § 2, p. 881.]

Compiler's Notes. The words in parentheses so appeared in the act.

43-1233. Fulfillment of probation terms — Effect. — Upon fulfillment of the terms and conditions of probation, or upon release by the court prior to the termination period thereof, the defendant shall be discharged without court adjudication of guilt, whereupon the court shall enter an appropriate order which shall effectively dismiss the case, discharge the defendant and expunge the record. Such order shall completely exonerate the defendant of any criminal purpose and shall not affect any civil rights or liberties of said defendant. Provided further, that a defendant so discharged may reply in the negative to questions pertaining to past criminal convictions in applications for employment, permits or licenses or in any other instance wherein a civil right or liberty might be affected.

Upon disposition of each case utilizing the procedures as provided herein, the judge of the circuit or municipal court shall give notice of the same to appropriate court officials and law enforcement agencies charged with keeping criminal justice records. [Acts 1975, No. 346, § 3, p. 881.]

43-1234. Limitation on use of procedure — Penalty for false testimony. — No person may avail himself of the provisions of this Act [§§ 43-1231 — 43-1235] on more than one [1] occasion. Furthermore, any person seeking to avail himself of the benefits of this Act who shall falsely testify, swear, or affirm to the court that he has not previously availed himself of the benefits of this Act, shall be deemed guilty of a felony and shall, upon conviction thereof, be punished by a fine of not less than Five Hundred Dollars ($500) nor more than Two Thousand Five Hundred Dollars ($2,500), or by imprisonment in the state penitentiary for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment. [Acts 1975, No. 346, § 4, p. 881.]

43-1235. Penalty for disclosure of records of first offenders. — Any person charged under the provisions of this Act [§§ 43-1231 — 43-1235] with keeping the confidential records of first offenders as provided in Section 1 [§ 43-1231] hereof shall, upon divulging any information contained in such records to any person or agency other than a law enforcement officer or judicial officer, upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than five hundred dollars ($500). Each such violation shall be considered a separate offense. [Acts 1975, No. 346, § 5, p. 881.]

REGULATIONS TO BE ISSUED BY DEPARTMENT OF PUBLIC SAFETY APPLICABLE TO ALL CJIS TERMINAL AGENCIES

Sec. 1. Purpose. These regulations are issued in compliance with Part 20 of Chapter 1 of Title 28 of the Code of Federal Regulations (Order No. 601-75, Fed. Reg., Vol. 40, No. 98, Tuesday, May 20, 1975).

Subsection 20.21(g) of Part 20 requires federally-assisted criminal justice information systems to implement operational procedures to permit individuals to review criminal history record information concerning them maintained in such systems to insure that such information is accurate and complete. If, after review, the individual claims that the information is inaccurate or incomplete, the procedures must provide for an administrative review of appropriate source documents to determine whether or not the information should be corrected. If the individual is dissatisfied with the review decision, he must be afforded some means of administrative appeal to an agency other than the agency declining to correct the information. If information is found to be inaccurate or incomplete, it must be corrected and all criminal justice agencies that have received the incorrect information must be notified of the correction. Upon request, the individual must be given a list of all non-criminal justice recipients of the incorrect information.

Sec. 2. Scope. The procedures set out below apply only to "criminal history record information," which should be understood to include only notations of the arrest or detention of an identified individual and the outcome of subsequent proceedings against the individual. In general, this includes the basic computerized criminal history (CCH) and offender-based transaction statistics (OBTS) data elements, traditionally collected on "rap sheets." The regulations do not apply to other types of information contained in criminal justice agency reports, such as intelligence or investigative information

(suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles, for example) except to the extent that criminal history record information is contained in such reports. Thus, if a rap sheet is contained in an intelligence file, the rap sheet must be corrected pursuant to the procedures set out below; but the intelligence data is not subject to review by the individual.

Sec. 3. Review by Individuals. Each terminal agency shall make available facilities and personnel necessary to permit review by individuals of criminal history record information concerning them. Reviews shall be conducted in accordance with the following procedures:

(a) Reviews shall take place only within the facilities of the agency and under the supervision and in the presence of an employee designated for that purpose. The agency may limit the hours for such reviews to normal daylight business hours. No fee may be charged for any such review, but a charge, not to exceed $5.00, may be made to recover the actual costs of any copies of records provided to the individual.

(b) Reviews shall be permitted only after verification that the requesting individual is the subject of the records he seeks to review. A rolled set of ten fingerprints shall be required for such verification. A review may be conducted on behalf of an individual by his attorney or other representative if such person presents adequate verification of the identity of the subject individual, including fingerprints, and a notarized statement from the individual authorizing him to conduct the review.

(c) A record of each review shall be maintained by the agency on Form No. 1 provided with these regulations. The form shall be completed and signed by the supervising employee present at the review and by the reviewing individual.

(d) If the criminal history record information requested by the individual is maintained at the agency, a copy of such information shall promptly be provided for the individual's review. If the agency has no criminal history record information

concerning the individual in its files, it shall forward a copy of the request form, together with the fingerprints, to the Bureau of Identification of the Arkansas State Police. The Bureau of Identification shall promptly conduct a search of its files and shall cause a search to be made of the automated files of the Criminal Justice and Highway Safety Information Center. If any criminal history record information concerning the individual is discovered, a copy of such information shall promptly be returned to the requesting agency, which shall notify the individual that the record is avialable for review. This notification shall take place no later than 15 days after the individual requests a review of his record.

(c) The reviewing individual may make and retain a written summary or notes in his own handwriting of the information. He shall be informed of his right to submit written exceptions as to the maintenance, completeness or accuracy of the information. If the individual does not wish to challenge the information, he may be asked, but may not be required, to verify by his signature the accuracy and completeness of the information.

Sec. 4. Administrative Review. Should any individual wish to challenge the maintenance, accuracy or completeness of criminal history record information concerning him, he shall do so within 10 days after the review of such information. Such challenge shall be recorded on Form No. 2 provided with these regulations. The individual shall indicate on the form the information he believes to be inaccurate, incomplete or improperly maintained, and shall state what he believes to be a correct and complete version of the information or why he believes the information should not be maintained. The reviewing individual shall attest by his signature that the exceptions are made in good faith and that the facts set forth are true to the best of his knowledge and belief. Upon his request, the individual shall be provided with a copy of that part of the information that he has challenged. Such copy shall be marked: "THIS COPY IS PROVIDED FOR PURPOSES OF REVIEW

AND CHALLENGE. ANY USE FOR ANY OTHER PURPOSE IS A VIOLATION OF SEC. 3771 OF TITLE 42 OF THE UNITED STATES CODE."

An administrative review of the challenge shall be conducted in accordance with the following procedures:

(a) The challenge form shall be forwarded to a review officer designated for that purpose in each agency. If the information challenged related to criminal proceedings that occurred in the political jurisdiction in which the reviewing agency is located, the review officer shall cause to be conducted an appropriate audit of source documents and other information necessary to determine the accuracy of the exceptions. If the information challenged related to criminal proceedings in another jurisdiction, a copy of the challenge form shall be sent to the Bureau of Identification of the Arkansas State Police. The Bureau shall promptly forward the form to the criminal justice agency, whether within or outside of the State of Arkansas, that originated the information that is the subject of the challenge. The Bureau shall request the agency to conduct an audit to determine the accuracy of the exceptions, to notify the Bureau within 30 days of the results of such audit, and to provide the Bureau with certified copies of the source documents on which the agency's decision is based. The Bureau shall promptly forward this information to the agency where the review took place. Should any agency over which the Bureau has no administrative authority fail to respond to the Bureau's request, the Bureau shall so notify the agency where the review took place. That agency shall notify the individual that he must pursue the challenge directly with the agency which originated the challenged information.

(b) The review officer shall notify the individual in writing of the decision concerning the challenge. Form No. 3 provided with these regulations shall be used for this purpose. The individual shall be informed that, if he is not satisfied with the decision, he may, within 10 days, request an administrative appeal to the Office of the Attorney General of the

State of Arkansas.

Sec. 5. Administrative Appeal. Should any individual elect an administrative appeal, the appeal shall be conducted in accordance with the following procedures:

(a) The appeal shall be requested on Form No. 4 provided with these regulations. A copy of the form, together with copies of any appropriate source documents provided by the individual or by any criminal justice agency, shall be forwarded to the Office of the Attorney General.

(b) The Attorney General or a member of his office designated to handle such appeals, shall review the request form and the statements and documents accompanying it and shall determine whether the challenged record is inaccurate, incomplete or improperly maintained. If he considers it necessary, the Attorney General or his designee may request additional information from any criminal justice agency, or may, in his sole discretion, order a hearing for the purpose of obtaining additional information. The order for such hearing shall state where the hearing shall be held, who shall conduct the hearing, whether the individual may appear, whether he may be represented by counsel and other procedures governing the conduct of such hearing.

(c) The Attorney General's decision on the appeal shall be recorded on Form No. 4, together with a statement of any relief to which the individual is entitled. Copies of the form shall be sent to the Bureau of Identification and to the criminal justice agency from which the appeal originated. The latter agency shall notify the individual of the Attorney General's decision and shall take any necessary action to implement the decision.

Sec. 6. Correction and Notification. Should it be determined as a result of a review or appeal conducted under these regulations that challenged criminal history record information is inaccurate, incomplete or improperly maintained, the information shall be appropriately deleted, supplemented or corrected in the files of the Bureau of Identification, the Criminal

Justice and Highway Safety Information System and any criminal justice agencies involved in the challenge procedures. In addition, such agencies shall give notice of the corrective action to any criminal justice agencies to which the incorrect information has been disseminated within the one-year period prior to the data of the challenge, and shall direct such agencies to correct their files and to give appropriate notice to other agencies to which they have disseminated the incorrect information within the previous year.

Sec. 7. List of Noncriminal Justice Recipients. Upon request by any individual whose record has been corrected pursuant to a challenge under these regulations, he shall be given a list of all noncriminal justice agencies or individuals to whom the incorrect information has been disseminated within the one-year period prior to the date of the challenge. This list shall be compiled by the criminal justice agency where the review and challenge took place, the criminal justice agency which originated the corrected information, the Criminal Justice and Highway Safety Information System and the Bureau of Identification, as appropriate.

Sec. 8. Administrative Penalties.

(a) Any failure to implement the provisions of these regulations by any employee or officer of any criminal justice agency subject to the regulations shall be punished by suspension, discharge, reduction in grade, transfer or such other administrative penalties as the agency shall deem appropriate.

(b) If any criminal justice agency subject to these regulations is found by the Bureau of Identification or the Criminal Justice and Highway Safety Information System to have wilfully and repeatedly failed to implement the procedures specified in these regulations, dissemination of criminal history record information to such agency may be terminated or suspended for such periods and on such terms as the Bureau of Identification and the Criminal Justice and Highway Safety Information System may deem appropriate.

DIRECTIVE ON INMATE RECORD REVIEW
(To be Issued by Director of Corrections)

Sec. 1. Purpose. This directive is issued in compliance with Part 20 of Chapter 1 of Title 28 of the Code of Federal Regulations (Order No. 601-75, Fed. Reg., Vol. 40, No. 98, Tuesday, May 20, 1975).

Subsection 20.21(g) of Part 20 requires federally-assisted criminal justice information systems to implement operational procedures to permit individuals to review criminal history record information concerning them maintained in such systems to insure that such information is accurate and complete. If, after review, the individual claims that the information is inaccurate or incomplete, the procedures must provide for an administrative review of appropriate source documents to determine whether or not the information should be corrected. If the individual is dissatisfied with the review decision, he must be afforded some means of administrative appeal to an agency other than the agency declining to correct the information. If information is found to be inaccurate or incomplete, it must be corrected and all criminal justice agencies that have received the incorrect information must be notified of the correction. Upon request, the individual must be given a list of all noncriminal justice recipients of the incorrect information.

Sec. 2. Scope. The procedures set out below apply only to "criminal history record information," which should be understood to include only notations of the arrest or detention of an identified individual and the outcome of subsequent proceedings against the individual. In general, this includes the basic computerized criminal history (CCH) and offender-based transaction statistics (OBTS) data elements, traditionally collected on "rap sheets." The regulations do not apply to other types of information contained in criminal justice agency reports, such as intelligence or investigative information or correctional treatment or program reports, except to the extent that criminal

history record information is contained in such reports. Thus, if a rap sheet is contained in a presentence report or a correctional treatment report, the rap sheet information must be corrected pursuant to the procedures set out below; but the presentence and treatment reports are not subject to review by the individual.

Sec. 3. Review by Inmate. Arrangements have been made to inform every inmate in the Arkansas correctional system of the right to review any criminal history record information concerning him on file in the Department of Corrections or in the Bureau of Identification of the Arkansas State Police. Reviews shall be conducted in accordance with the following procedures:

(a) Reviews shall take place only under the supervision of and in the presence of an employee of the Department designated for that purpose. The Department may limit the hours for such reviews to normal daylight business hours. No fee may be charged for any such review, but a charge, not to exceed $5.00, may be made to recover the actual costs of any copies of records provided to the inmate.

(b) Reviews shall be permitted only after verification that the inmate is the subject of the records he seeks to review. A rolled set of ten fingerprints shall be required for such verification.

(c) A record of each review shall be maintained by the Department on Form No. 1 provided with this directive. The form shall be completed and signed by the supervising employee present at the review and by the reviewing inmate.

(d) The inmate shall be permitted to make and retain a written summary or notes in his own handwriting of the information. He shall be informed of his right to submit written

exceptions as to the maintenance, completeness or accuracy of the information. If the inmate does not wish to challenge the information, he may be asked, but may not be required, to verify by his signature the accuracy and completeness of the information.

Sec. 4. Administrative Review. Should any inmate wish to challenge the maintenance, accuracy or completeness of criminal history record information concerning him, he shall do so within 10 days after the review of such information. Such challenge shall be recorded on Form No. 2 provided with this directive. The inmate shall indicate on the form the information he believes to be inaccurate, incomplete or improperly maintained, and shall state what he believes to be a correct and complete version of the information or why he believes the information should not be maintained. The inmate shall attest by his signature that the exceptions are made in good faith and that the facts set forth are true to the best of his knowledge and belief. Upon his request, he shall be provided with a copy of that part of the information that he has challenged. Such copy shall be marked: "THIS COPY IS PROVIDED FOR PURPOSES OF REVIEW AND CHALLENGE. ANY USE FOR ANY OTHER PURPOSE IS A VIOLATION OF SEC. 3771 OF TITLE 42 OF THE UNITED STATES CODE."

An administrative review of the challenge shall be conducted in accordance with the following procedures:

(a) The challenge form shall be forwarded to a review officer designated for that purpose in the Department. If the accuracy of the exceptions taken can be determined from records and information maintained within the Department of Corrections or available to the Department, the review officer shall cause to be conducted an appropriate audit of source documents and other information necessary to determine the accuracy of the exceptions. If the information challenged relates to criminal proceedings in another jurisdiction or other matters as to which the Department has no knowledge or records, a copy of the challenge form shall be sent to the Bureau of Identification of

the Arkansas State Police. The Bureau shall promply forward the form to the criminal justice agency, whether within or outside of the State of Arkansas, that originated the information that is the subject of the challenge. The Bureau shall request the agency to conduct an audit to determine the accuracy of the exceptions, to notify the Bureau within 30 days of the results of such audit, and to provide the Bureau with certified copies of the source documents on which the agency's decision is based. The Bureau shall promptly forward this information to the Department of Corrections. Should any agency over which the Bureau has no administrative authority fail to respond to the Bureau's request, the Bureau shall so notify the Department. The Department shall notify the inmate that he must pursue the challenge directly with the agency which originated the challenged information. He shall be provided with the name and address of that agency.

(b) The review officer shall notify the inmate in writing of the decision concerning the challenge. Form No. 3 provided with this directive shall be used for this purpose. The inmate shall be informed that, if he is not satisfied with the decision, he may, within 10 days, request an administrative appeal to the Office of the Attorney General of the State of Arkansas.

Sec. 5. Administrative Appeal. Should any inmate elect an administrative appeal, the appeal shall be conducted in accordance with the following procedures:

(a) The appeal shall be requested on Form No. 4 provided with this directive. A copy of the form, together with copies of any appropriate source documents or other information, shall be forwarded to the Office of the Attorney General.

(b) The Attorney General or a member of his office designated to handle such appeals, shall review the request form and the statements and documents accompanying it and shall determine whether the challenged record is inaccurate, incomplete or improperly maintained. If he considers it necessary, the

Attorney General or his designee may request additional information from any criminal justice agency, or may, in his sole discretion, order a hearing for the purpose of obtaining additional information. The order for such hearing shall state where the hearing shall be held, who shall conduct the hearing, whether the inmate may appear, whether he may be represented by counsel and other procedures governing the conduct of such hearing.

(c) The Attorney General's decision on the appeal shall be recorded on Form No. 4, together with a statement of any relief to which the inmate is entitled. Copies of the form shall be sent to the Bureau of Identification and to the Department of Corrections. The Department shall notify the inmate of the Attorney General's decision and shall take all appropriate action to implement the decision.

Sec. 6. Correction and Notification. Should it be determined as a result of a review or appeal conducted under this directive that challenged criminal history record information is inaccurate, incomplete, or improperly maintained, the information shall be appropriately deleted, supplemented or corrected in the files of the Department of Corrections, Bureau of Identification, the Criminal Justice and Highway Safety Information System and any criminal justice agencies involved in the challenge procedures. In addition, such departments and agencies shall give notice of the corrective action to any criminal justice agencies to which the incorrect information has disseminated within the one-year period prior to the date of the challenge, and shall direct such agencies to correct their files and to give appropriate notice to other agencies to which they have disseminated the incorrect information within the previous year.

Sec. 7. List of Noncriminal Justice Recipients. Upon request by any inmate whose record has been corrected pursuant to a challenge under this directive, he shall be given a list of all noncriminal justice agencies or individuals to whom the incorrect information has been disseminated within the one-year

period prior to the date of the challenge. This list shall be compiled by the Department of Corrections, the criminal justice agency which originated the corrected information, the Criminal Justice and Highway Safety Information System and the Bureau of Identification, as appropriate.

Sec. 8. Administrative Penalties. Any failure to implement the provisions of this directive by any employee or officer of the Department of Corrections shall be punished by suspension, discharge, reduction in grade, transfer or such other administrative penalties as shall be deemed appropriate.

_____ _____

(Director of Corrections) (Date)

GOVERNMENT CODE

§ 6251. Short title

This chapter shall be known and may be cited as the California Public Records Act.
(Added by Stats.1968, c. 1473, p. 2946, § 39.)

§ 6252. Definitions

As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; or other local public agency.

(c) "Person" includes any natural person, corporation, partnership, firm, or association.

(d) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of or maintained by the Governor's office means any writing prepared on or after January 6, 1975.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.
(Added by Stats.1968, c. 1473, p. 2946, § 39. Amended by Stats.1970, c. 575, p. 1151, § 2; Stats.1975, c. 1246, p. —, § 2.)

§ 6253. Public records open to inspection; time; guidelines and regulations governing procedure

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every citizen has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records * * *. A copy of these guidelines shall be posted in a conspicuous public place at the offices of such bodies * * *, and a copy of such guidelines shall * * * be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
* * * Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Department of Health
* * * Employment Development Department
Department of Benefit Payments
Public Employees' Retirement System
Teachers' Retirement * * * Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California * * * Coastal Zone Conservation Commission
All regional * * * coastal zone conservation commissions
State Water Quality Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District.

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make such records accessible to the public.

§ 6254. Exemption of particular records

Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure;

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, until such litigation or claim has been finally adjudicated or otherwise settled;

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies;

(2) Examination, operating, or condition reports prepared by, * * * on behalf of, or for the use of any state agency referred to in subdivision (1);

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of any state agency referred to in subdivision (1); or

(4) Information received in confidence by any state agency referred to in subdivision (1).

(e) Geological and geophysical data, plant production data and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person;

(f) Records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes, except that local police agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the persons involved in an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage as the result of the incident caused by arson, burglary, fire, explosion, robbery, vandalism, or a crime of violence as defined by subdivision (b) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, disclosure would endanger the successful completion of the investigation or a related investigation;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(h) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all of the contract agreement obtained, provided, however, the law of eminent domain shall not be affected by this provision;

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying such information;

(j) Library and museum materials made or acquired and presented solely for reference or exhibition purposes;

(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege;

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, pro-

vided public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter;

(m) In the custody or maintained by the Legislative Counsel;

(n) Statements of personal worth or personal financial data * * * required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate, or permit applied for; and

Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

(Added by Stats.1968, c. 1473, p. 2946, § 39. Amended by Stats.1970, c. 1231, p. 2157, § 11.5; Stats.1970, c. 1295, p. 2396, § 1.5; Stats.1975, c. 1231, p. —, § 1; Stats.1975, c. 1246, p. —, § 3; Stats.1976, c. 314, p. —, § 1.)

§ 6255. Justification for withholding of records

The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

(Added by Stats.1968, c. 1473, p. 2947, § 39.)

§ 6256. Copies of records

Any person may receive a copy of any identifiable public record or * * * copy * * * thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(Added by Stats.1968, c. 1473, p. 2947, § 39. Amended by Stats.1970, c. 575, p. 1151, § 3.)

§ 6258. Proceedings to enforce right to inspect or to receive copy of record

Any person may institute proceedings for injunctive or declarative relief in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in such proceedings shall be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time.

(Added by Stats.1968, c. 1473, p. 2948, § 39. Amended by Stats.1970, c. 575, p. 1151, § 4.)

§ 6259. Order of court; contempt; court costs and attorney fees

Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Section 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court. The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. Such costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

(Added by Stats.1968, c. 1473, p. 2948, § 39. Amended by Stats.1975, c. 1246, p. —, § 9.)

§ 851.7 Petition to seal court records by person arrested for misdemeanor while a minor; grounds; exceptions

(a) Any person who has been arrested for a misdemeanor, with or without a warrant, while a minor, may, during or after minority, petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, if any of the following occurred:

(1) He was released pursuant to paragraph (1) of subdivision (b) of Section 849.

(2) Proceedings against him were dismissed, or he was discharged, without a conviction.

(3) He was acquitted.

(b) If the court finds that the petitioner is eligible for relief under subdivision (a), it shall issue its order granting the relief prayed for. Thereafter, the arrest, detention, and any further proceedings in the case shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence.

(c) This section applies to arrests and any further proceedings that occurred before, as well as those that occur after, the effective date of this section.

(d) This section does not apply to any person taken into custody pursuant to Section 625 of the Welfare and Institutions Code, or to any case within the scope of Section 781 of the Welfare and Institutions Code, unless, after a finding of unfitness for the juvenile court or otherwise, there were criminal proceedings in the case, not culminating in conviction. If there were criminal proceedings not culminating in conviction, this section shall be applicable to such criminal proceedings if such proceedings are otherwise within the scope of this section.

(e) This section does not apply to arrests for, and any further proceedings relating to, any of the following:

(1) Offenses for which registration is required under Section 290.

(2) Offenses under Division 10 (commencing with Section 11000) of the Health and Safety Code.

(3) Offenses under the Vehicle Code or any local ordinance relating to the operation, stopping, standing, or parking of a vehicle.

(f) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted in evidence. The records shall be confidential * * * and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(g) This section shall apply in any case in which a person was under the age of 21 at the time of the commission of an offense as to which this section is made applicable if such offense was committed prior to March 7, 1973.

(Amended by Stats.1970, c. 497, p. 978, § 1; Stats.1974, c. 401, p. 986, § 1.)

§§ 851.8 Motion to seal records on acquittal if person appears to judge to be factually innocent; rights of defendant under order

Whenever a person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of the charge, the judge may order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case. If such an order is made, the court shall give to the defendant a copy of such order and inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court.

(Added by Stats.1975, c. 904, p. ——, § 1.)

Library References

Criminal Law ⇐1222.

C.J.S. Criminal Law § 2008 et seq.

1. In general

Arrest records and all other documents in the case may be sealed upon request whenever a person charged with any offense has been acquitted and it appears to the judge that he was "factually innocent"; and in that event, the court must inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court. Loder v. Municipal Court for San Diego Judicial Dist. of San Diego County (1976) 132 Cal.Rptr. 464, 553 P.2d 624.

PENAL CODE

§ 11075. Criminal offender record information

(a) As used in this article, "criminal offender record information" means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

(b) Such information shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto.

(Added by Stats.1972, c. 1437, p. 3148, § 1.)

§ 11076. Dissemination to authorized agencies

Criminal offender record information shall be disseminated, whether directly or through any intermediary, only to such agencies as are, or may subsequently be, authorized access to such records by statute.

(Added by Stats.1972, c. 1437, p. 3148, § 1.)

1. In general

Where accused sought discovery of felony conviction record if any, of principal prosecution witness for purposes of attacking his credibility, accused was not required to give any explanation as to why the information sought could not be obtained directly from the witness. Hill v. Superior Court of Los Angeles County (1974) 112 Cal.Rptr. 257, 518 P.2d 1353, 10 C.3d 812.

§ 11077. Attorney general; duties

The Attorney General is responsible for the security of criminal offender record information. To this end, he shall:

(a) Establish regulations to assure the security of criminal offender record information from unauthorized disclosures at all levels of operation in this state.

(b) Establish regulations to assure that such information shall be disseminated only in situations in which it is demonstrably required for the performance of an agency's or official's functions.

(c) Coordinate such activities with those of any interstate systems for the exchange of criminal offender record information.

(d) Cause to be initiated for employees of all agencies that maintain, receive, or are eligible to maintain or receive, criminal offender record information a continuing educational program in the proper use and control of criminal offender record information.

(e) Establish such regulations as he finds appropriate to carry out his functions under this article.

(Added by Stats.1972, c. 1437, p. 3148, § 1.)

§ 11078. Listing of agencies to whom information released or communicated

Each agency holding or receiving criminal offender record information in a computerized system shall maintain, for such period as is found by the Attorney General to be appropriate, a listing of the agencies to which it has released or communicated such information.

(Added by Stats.1972, c. 1437, p. 3148, § 1.)

§ 11105. State summary criminal history information; maintenance; furnishing to authorized persons; fingerprints on file without criminal history; fees

(a)(1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(i) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.

(ii) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does

it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (b) of Section 830.2, subdivisions (a), (b), and (k) of Section 830.3, subdivisions (a), (b), and (c), of Section 830.5, and Section 830.5a.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08 of the Penal Code.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120), Chapter 1, Title 1 of Part 4 of the Penal Code.

(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 3110 of the Health and Safety Code.

(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the Attorney General sup-

plies such data, he shall furnish a copy of such data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when such information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished pursuant to this section, the Department of Justice may charge the person or entity making the request a fee which it determines to be sufficient to reimburse the department for the cost of furnishing such information. Any state agency required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the agency for such expense. All moneys received by the department pursuant to this section, Section 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to such sections when appropriated by the Legislature therefor.

(f) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(Added by Stats.1975, c. 1222, p. —, § 2. Amended by Stats.1976, c. 683, p. —, § 1.)

§ 11105.5 Notice to officers and agents that record of minor or person acquitted who was factually innocent has been sealed

When the Bureau of Criminal Identification and Investigation receives a report that the record of a * * * person has been sealed under Section 851.7, 851.8, or 1203.45 of the Penal Code, it shall send notice of that fact to all officers and agencies that it had previously notified of the arrest or other proceedings against the * * * person.

(Amended by Stats.1975, c. 904, p. —, § 2.)

PENAL CODE SECTION 11112

Fingerprints and Descriptions of Persons Arrested for Certain Offenses; Daily Reports

The first agency to receive a person for booking after his arrest shall furnish the bureau daily copies of fingerprints on standardized eight- by eight-inch cards, and descriptions of: (a) all persons who have been arrested for the commission of any offense defined in Section 266, 267, 268, 285, 286, 288, 288a, 314, 647a, subdivision (a) or (d) of Section 647, subdivision 3 or 4 of Section 261, or of any offense involving lewd and lascivious conduct under Section 272; (b) all persons arrested who in the best judgment of any such officer are wanted for serious crimes, or are fugitives from justice; (c) all persons in whose possession at the time of arrest are found goods or property reasonably believed by any such officers to have been stolen by them; (d) all persons in whose possession are found burglar outfits or burglar keys or who have in their possession high-power explosives reasonably believed to be used or intended to be used for unlawful purposes; (e) all persons who are in possession of infernal machines, bombs or other contrivances in whole or in part and reasonably believed by any said officer to be used or intended to be used for unlawful purposes; (f) all persons who carry concealed firearms or other deadly weapons which are reasonably believed to be carried for unlawful purposes; (g) all persons who have in their possession inks, dye, paper or other articles necessary in the making of counterfeit banknotes, or in the alteration of banknotes, checks, drafts or other instruments of credit; or dies, molds or other articles necessary in the making of counterfeit money, and reasonably believed to be used or intended to be used by them for such unlawful purposes.

(Added by Stats. 1953, c. 1385, p. 2967, Section 1. Amended by Stats.1968, c. 377, p. 789, Section 1; Stats.1969, c. 43, p. 155, Section 5.)

CRSU/3-5-76

§ 11115. Arrests; report on disposition of case

In any case in which a sheriff, police department or other law enforcement agency makes an arrest and transmits a report of the arrest to the Department of Justice or to the Federal Bureau of Investigation, it shall be the duty of such law enforcement agency to furnish a disposition report to such agencies whenever the arrested person is transferred to the custody of another agency or is released without having a complaint or accusation filed with a court.

If either of the following dispositions is made, the disposition report shall so state:

(a) "Arrested for intoxication and released," when the arrested party is released pursuant to paragraph (2) of subdivision (b) of Section 849.

(b) "Detention only," when the detained party is released pursuant to paragraph (1) of subdivision (b) of Section 849 or issued a certificate pursuant to subdivision (b) of Section 851.6. In such cases the report shall state the specific reason for such release, indicating that there was no ground for making a criminal complaint because (1) further investigation exonerated the arrested party, (2) the complainant withdrew the complaint, (3) further investigation appeared necessary before prosecution could be initiated, (4) the ascertainable evidence was insufficient to proceed further, (5) the admissible or adducible evidence was insufficient to proceed further, or (6) other appropriate explanation for release.

When a complaint or accusation has been filed with a court against such an arrested person, the law enforcement agency having primary jurisdiction to investigate the offense alleged therein shall receive a disposition report of that case from the appropriate court and shall transmit a copy of the disposition report to all the bureaus to which arrest data has been furnished.

(Amended by Stats.1972, c. 1377, p. 2839, § 84; Stats.1975, c. 1117, p. —, § 2.)

§ 11116. Report on disposition of case; disposition labels

Whenever a criminal complaint or accusation is filed in any superior, municipal or justice court, the clerk, or, if there be no clerk, the judge of that court shall furnish a disposition report of such case to the sheriff, police department or other law enforcement agency primarily responsible for the investigation of the crime alleged in a form prescribed or approved by the Department of Justice.

The disposition report shall state one or more of the following, as appropriate:

(a) "Dismissal in furtherance of justice, pursuant to Section 1385 of the Penal Code." In addition to this disposition label, the court shall set forth the particular reasons for the dismissal as stated in its order entered upon the minutes.

(b) "Case compromised; defendant discharged because restitution or other satisfaction was made to the injured person, pursuant to Sections 1377 and 1378 of the Penal Code."

(c) "Court found insufficient cause to believe defendant guilty of a public offense; defendant discharged without trial pursuant to Section 871 of the Penal Code."

(d) "Dismissal due to delay; action against defendant dismissed because the information was not filed or the action was not brought to trial within the time allowed by Section 1381, 1381.5, or 1382 of the Penal Code."

(e) "Accusation set aside pursuant to Section 995 of the Penal Code." In addition to this disposition label, the court shall set forth the particular reasons for the disposition.

(f) "Defective accusation; defendant discharged pursuant to Section 1008 of the Penal Code," when the action is dismissed pursuant to that section after demurrer is sustained, because no amendment of the accusatory pleading is permitted or amendment is not made or filed within the time allowed.

(g) "Defendant became a witness for the people and was discharged pursuant to Section 1099 of the Penal Code."

(h) "Defendant discharged at trial because of insufficient evidence, in order to become a witness for his codefendant pursuant to Section 1100 of the Penal Code."

(i) "Proceedings suspended; defendant found presently insane and committed to state hospital pursuant to Sections 1367 to 1372 of the Penal Code." If defendant later becomes sane and is legally discharged pursuant to Section 1372, his disposition report shall so state.

(j) "Convicted of (state offense)." The disposition report shall state whether defendant was convicted on plea of guilty, on plea of nolo contendere, by jury verdict, or by court finding and shall specify the sentence imposed, including probation granted, suspension of sentence, imposition of sentence withheld, or fine imposed, and if fine was paid.

(k) "Acquitted of (state offense)," when a general "not guilty" verdict or finding is rendered.

(*l*) "Not guilty by reason of insanity," when verdict or finding is that defendant was insane at the time the offense was committed.

(m) "Acquitted; proof at trial did not match accusation," when defendant is acquitted by reason of variance between charge and proof pursuant to Section 1151.

(n) "Acquitted; previously in jeopardy," when defendant is acquitted on a plea of former conviction or acquittal or once in jeopardy pursuant to Section 1151.

(*o*) "Judgment arrested; defendant discharged," when the court finds defects in the accusatory pleading pursuant to Sections 1185 to 1187, and defendant is released pursuant to Section 1188.

(p) "Judgment arrested; defendant recommitted," when the court finds defects in the accusatory pleading pursuant to Sections 1185 to 1187, and defendant is recommitted to answer a new indictment or information pursuant to Section 1188.

(q) "Mistrial; defendant discharged." In addition to this disposition label, the court shall set forth the particular reasons for its declaration of a mistrial.

(r) "Mistrial; defendant recommitted." In addition to this disposition label, the court shall set forth the particular reasons for its declaration of a mistrial.

(s) Any other disposition by which the case was terminated. In addition to the disposition label, the court shall set forth the particular reasons for the disposition.

Whenever a court shall dismiss the accusation or information against a defendant under the provisions of Section 1203.4 of this code, and whenever a * * * court shall order the record of a * * * person sealed under the provisions of Section 851.7, 851.8, or 1203.45 of this code, the clerk, or, if there be no clerk, the judge of that court shall furnish a report of such proceedings to the Department of Justice and shall include therein such information as may be required by said department.

(Amended by Stats.1972, c. 1377, p. 2840, § 85; Stats.1975, c. 904, p. —, § 3.)

§ 11116.10 Notice of disposition to victim of crime upon request

(a) Upon the request of a victim of a crime, the prosecuting attorney shall, within 60 days of the final disposition of the case, inform the victim by letter of such final disposition. Such notice shall state the information described in Section 11116.

(b) As used in this section, "victim" means any person alleged or found, upon the record, to have sustained physical or financial injury to person or property as a direct result of the crime charged.

(c) As used in this section, "final disposition," means an ultimate termination of the case at the trial level including, but not limited to, dismissal, acquittal, or imposition of sentence by the court, or a decision by the prosecuting attorney, for whatever reason, to not file the case.

(d) This section shall not apply in any case where the offender or alleged offender is a minor unless such minor has been declared not a fit and proper subject to be dealt with under the juvenile court law.

(e) This section shall not apply to any case in which a disposition was made prior to the effective date of this section.

(Added by Stats.1976, c. 1061, p. —, § 1.)

§ 11117. Procedures and forms; record of disposition; time for forwarding reports; inadmissible in civil cases

The * * * Department of Justice shall prescribe and furnish the procedures and forms to be used for the disposition reports required in this article. The * * * department shall add the disposition reports received to all appropriate criminal records.

The disposition reports required in this article shall be forwarded to the * * * department and the Federal Bureau of Investigation within 30 days after the release of the arrested or detained person or the termination of court proceedings.

Neither the disposition reports nor the disposition labels required in this article shall be admissible in evidence in any civil action.

(Amended by Stats.1972, c. 1377, p. 2841, § 86.)

ARTICLE 5. EXAMINATION OF RECORDS

§ 11120. Record defined

As used in this article, "record" with respect to any person means the state summary criminal history information as defined in subdivision (a) of Section 11105, maintained under such person's name by the Department of Justice.

(Amended by Stats.1972, c. 1377, p. 2847, § 86.1; Stats.1975, c. 1222, p. —, § 3.)

§ 11122. Submission of application; fee

Any person desiring to examine a record relating to himself shall obtain from the chief of police of the city of his residence, or, if not a resident of a city, from the sheriff of his county of residence, or from the office of the department, an application form furnished by the department which shall require his fingerprints in addition to such other information as the department shall specify. The city or county, as applicable, may fix a reasonable fee for affixing the applicant's fingerprints to the form, and shall retain such fee for deposit in its treasury.

(Amended by Stats.1972, c. 1377, p. 2842, § 86.2.)

§ 11123. Submission of application; fee

The applicant shall submit the completed application directly to the department. The application shall be accompanied by a fee of five dollars ($5) or such higher amount, not to exceed ten dollars ($10) that the department determines equals the costs of processing the application and making a record available for examination. All fees received by the department under this section are hereby appropriated without regard to fiscal years for the support of the Department of Justice in addition to such other funds as may be appropriated therefor by the Legislature.

(Amended by Stats.1972, c. 1377, p. 2842, § 86.3.)

§ 11124. Notice of existence of record; time and place of inspection; examination; authority to take notes

When an application is received by the department, the department shall determine whether a record pertaining to the applicant is maintained. If such record is maintained, the department shall inform the applicant by mail of the existence of the record and shall either specify a time when the record may be examined at a suitable facility of the department or, if the applicant is unable to review the record at the time and place set by the department, authorize the applicant to review the record at any police department or sheriff's office which agrees to make the record available to the applicant. Upon verification of his identity, the applicant shall be allowed to examine the record pertaining to him, or a true copy thereof, for a period not to exceed one hour. The applicant may not retain or reproduce the record, but may make a written summary or notes in his own handwriting.

(Amended by Stats.1972, c. 1377, p. 2848, § 86.4; Stats.1975, c. 667, p. —, § 1.)

§ 11125. Application of prisoner; place of examination of record

If the applicant is imprisoned in the state prison or confined in the county jail, his application shall be through the office in charge of records of the prison or jail. Such offices shall follow the provisions of this article applicable to cities and counties with respect to applications and fees. When an application is transmitted to the department pursuant to this section, the department shall make arrangements for the applicant to examine the record at his place of confinement. In all other respects, the provisions of Section 11124 shall govern the examination of the record.

(Amended by Stats.1972, c. 1377, p. 2842, § 86.5.)

§ 11126. Correction of record; written request for clarification; notice to applicant of determination; administrative adjudication; judicial review

(a) If the applicant desires to question the accuracy or completeness of any matter contained in the record, he may submit a written request, to the department in a form established by it. The request shall include a statement of the alleged inaccuracy or incompleteness in the record, and specify any proof or corroboration available. Upon receipt of such request, the department shall forward it to the person or agency which furnished the questioned information. Such person or agency shall, within 30 days of receipt of such written request for clarification, review its information and forward to the department the results of such review.

(b) If such agency concurs in the allegations of inaccurateness or incompleteness in the record, it shall correct its record and shall so inform the department, which shall correct the record accordingly. The department shall inform the applicant of its correction of the record under this subdivision within 30 days.

(c) If such agency denies the allegations of inaccurateness or incompleteness in the record, the matter shall be referred for administrative adjudication in accordance with Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code for a determination of whether inaccuracy or incompleteness exists in the record. The agency from which the questioned information originated shall be the respondent in the hearing. If an inaccuracy or incompleteness is found in any record, the agency in charge of that record shall be directed to correct it accordingly. Judicial review of the decision shall be governed by Section 11523 of the Government Code. The applicant shall be informed of the decision within 30 days of its issuance in accordance with Section 11518 of the Government Code.

(Amended by Stats.1972, c. 1377, p. 2843, § 86.6.)

§ 11127. Regulations

The department shall adopt all regulations necessary to carry out the provisions of this article.

(Amended by Stats.1972, c. 1377, p. 2843, § 86.7.)

ARTICLE 6. UNLAWFUL FURNISHING OF * * * STATE SUMMARY CRIMINAL HISTORY INFORMATION [NEW]

§ 11140. Definitions

As used in this article:

(a) "Record" means the * * * state summary criminal history information as defined in subdivision (a) of Section 11105, or a copy thereof, maintained under a person's name by the Department of Justice. * * *

(b) "A person authorized by law to receive a record" means any person or public agency authorized by a court, statute, or decisional law to receive a record.
(Added by Stats.1974, c. 963, p. 2008, § 1. Amended by Stats.1975, c. 1222, p. —, § 5.)

1975 Amendment. Substituted "state summary criminal history information as defined in subdivision (a) of Section 11105," for "master record sheet" in subd. (a).

§ 11141. Employee of justice department furnishing record or information to unauthorized person; misdemeanor

Any employee of the Department of Justice who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.
(Added by Stats.1974, c. 963, p. 2008, § 1.)

Library References
Records ⇐14.
C.J.S. Records § 35 et seq.

§ 11142. Authorized person furnishing record or information to unauthorized person; misdemeanor

Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.
(Added by Stats.1974, c. 963, p. 2008, § 1.)

Library References
Records ⇐14.
C.J.S. Records § 35 et seq.

§ 11143. Unauthorized person receiving record or information; misdemeanor

Any person, except those specifically referred to in Section 1070 of the Evidence Code, who, knowing he is not authorized by law to receive a record or information obtained from a record, knowingly buys, receives, or possesses the record or information is guilty of a misdemeanor.
(Added by Stats.1974, c. 963, p. 2009, § 1.)

§ 11144. Dissemination of statistical or research information from a record

(a) It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(b) It is not a violation of this article to disseminate information obtained from a record for the purpose of assisting in the apprehension of a person wanted in connection with the commission of a crime.

(c) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.
(Added by Stats.1974, c. 963, p. 2009, § 1.)

§ 11150. Release from penal institution, notice

Prior to the release of a person convicted of arson from an institution under the jurisdiction of the Department of Corrections, the Director of Corrections shall notify the State Fire Marshal and the * * * Department of Justice in writing. The notice shall state the name of the person to be released, the county in which he was convicted and, if known, the county in which he will reside.
(Amended by Stats.1972, c. 1377, p. 2843, § 87.)

§ 11152. Notice to fire departments, police departments and sheriff

Upon receipt of a notice as provided in Sections 11150 or 11151, the State Fire Marshal shall notify all regularly organized fire departments in the county in which the person was convicted and, if known, in the county in which he is to reside and the * * * Department of Justice shall notify all police departments and the sheriff in such county or counties.
(Amended by Stats.1972, c. 1377, p. 2843, § 88.)

§ 13100. Legislative declaration

Th Legislature finds and declares as follows:

(a) That the criminal justice agencies in this state require, for the performance of their official duties, accurate and reasonably complete criminal offender record information.

(b) That the Legislature and other governmental policymaking or policy-researching bodies, and criminal justice agency management units require greatly improved aggregate information for the performance of their duties.

(c) That policing agencies and courts require speedy access to information concerning all felony and selected misdemeanor arrests and final dispositions of such cases.

(d) That criminal justice agencies may require regular access to detailed criminal histories relating to any felony arrest that is followed by the filing of a complaint.

(e) That, in order to achieve the above improvements, the recording, reporting, storage, analysis, and dissemination of criminal offender record information in this state must be made more uniform and efficient, and better controlled and coordinated.

(Added by Stats.1973, c. 992, p. 1909, § 1, operative July 1, 1978.)

§ 13101. Criminal justice agencies

As used in this chapter, "criminal justice agencies" are those agencies at all levels of government which perform as their principal functions, activities which either:

(a) Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders: or

(b) Relate to the collection, storage, dissemination or usage of criminal offender record information.

(Added by Stats.1973, c. 992, p. 1909, § 1, operative July 1, 1978.)

Operative July 1, 1978.

§ 13102. Criminal offender record information

As used in this chapter, "criminal offender record information" means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

Such information shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto. It shall be understood to include, where appropriate, such items for each person arrested as the following:

(a) Personal identification.

(b) The fact, date, and arrest charge; whether the individual was subsequently released and, if so, by what authority and upon what terms.

(c) The fact, date, and results of any pretrial proceedings.

(d) The fact, date, and results of any trial or proceeding, including any sentence or penalty.

(e) The fact, date, and results of any direct or collateral review of that trial or proceeding; the period and place of any confinement, including admission, release; and, where appropriate, readmission and rerelease dates.

(f) The fact, date, and results of any release proceedings.

(g) The fact, date, and authority of any act of pardon or clemency.

(h) The fact and date of any formal termination to the criminal justice process as to that charge or conviction.

(i) The fact, date, and results of any proceeding revoking probation or parole.

It shall not include intelligence, analytical, and investigative reports and files, nor statistical records and reports in which individuals are not identified and from which their identities are not ascertainable.

(Added by Stats.1973, c. 992, p. 1909, § 1, operative July 1, 1978.)

§ 13125. Standard data elements; enumeration

All basic information stored in state or local criminal offender record information systems shall be recorded, when applicable and available, in the form of the following standard data elements * * *:

The following personal identification data:

- Name—(full name)
  - Aliases
  - Monikers
- Race
- Sex
- Date of birth
- Place of birth (state or country)
- Height
- Weight
- Hair color
- Eye color
- CII number
- FBI number
- Social security number
- California operators license number
- Fingerprint classification number
  - Henry
  - NCIC
- Address

The following arrest data:

- Arresting agency
- Booking number
- Date of arrest
- Offenses charged
  - Statute citations
  - Literal descriptions
- Police disposition
  - Released
  - Cited and released
  - Turned over to
  - Complaint filed

The following lower court data:

- County and court name
- Date complaint filed
- Original offenses charged in complaint to superior court
  - Held to answer
  - Certified plea
- Disposition—lower court
  - Not convicted
  - Dismissed
  - Acquitted
    - Court trial
    - Jury trial

The following lower court data:—Continued
- Disposition—lower court—Continued
  - Convicted
    - Plea
    - Court trial
    - Jury trial
  - Date of disposition
  - Convicted offenses
  - Sentence
  - Proceedings suspended
    - Reason suspended

The following superior court data:
- County
- Date complaint filed
- Type of proceeding
  - Indictment
  - Information
  - Certification
- Original offenses charged in indictment or information
- Disposition
  - Not convicted
  - Dismissed
  - Acquitted
    - Court trial
    - Jury trial
    - On transcript
  - Convicted—felony, misdemeanor
    - Plea
    - Court trial
    - Jury trial
    - On transcript
  - Date of disposition
  - Convicted offenses
  - Sentence
  - Proceedings suspended
    - Reason suspended
  - Source of reopened cases

The following corrections data:
- Adult probation
  - County
  - Type of court
  - Court number
  - Offense
  - Date on probation
  - Date removed
  - Reason for removal
- Jail (unsentenced prisoners only)
  - Offenses charged
  - Name of jail or institution
  - Date received
  - Date released
  - Reason for release
    - Bail on own recognizance
    - Bail
    - Other
  - Committing agency
- County jail (sentenced prisoners only)
  - Name of jail, camp, or other

The following corrections data:—Continued
Co\ ıty jail (sentenced prisoners only)—Continued
Convicted offense
Sentence
Date received
Date released
Reason for release
Committing agency
Youth Authority
County
Type of court
Court number
Youth Authority number
Date received
Convicted offense
Type of receipt
Original commitment
Parole violator
Date released
Type of release
Custody
Supervision
Date terminated
Department of Corrections
County
Type of court
Court number
Department of Corrections number
Date received
Convicted offense
Type of receipt
Original commitment
Parole violator
Date released
Type of release
Custody
Supervision
Date terminated
Mentally disordered sex offenders
County
Hospital number
Date received
Date discharged
Recommendation

(Added by Stats.1973, c. 992, p. 1910, § 1, operative July 1, 1978. Amended by Stats.1974, c. 790, p. 1719, § 1, operative July 1, 1978.)

Operative July 1, 1978.

1974 Amendment. Included "Cited and released" under arrest data and included under corrections data, the information requirements relating to jail (unsentenced prisoners only).

Library References
Records ⇐3.
C.J.S. Records § 3.

§ 13126. Repealed by Stats.1974, c. 790, p. 1722, § 2, operative July 1, 1978

The repealed section, added by Stats.1973, c. 992, p. 1913, § 1, operative July 1, 1978, allowed the department of justice to modify the enumerated list of data elements.

§ 13127. Fingerprint identification number; inclusion by agency originating record; time

Each recording agency shall insure that each portion of a criminal offender record that it originates shall include, for all felonies and reportable misdemeanors, the state or local unique and permanent fingerprint identification number, within 72 hours of origination of such records, excluding Saturday, Sunday, and holidays. (Added by Stats.1973, c. 992, p. 1913, § 1, operative July 1, 1978.)

Operative July 1, 1978.

ARTICLE 3. REPORTING INFORMATION

Sec.
13150. Arrest; date required.
13151. Court dispositions; admissions or releases from detention facilities; time.
13152. Felony complaint and subsequent action; minimum date.
13153. Arrests for being found in public place under the influence of intoxicating liquor.

Article 3 was added by Stats.1973, c. 992, p. 1913, § 1, operative July 1, 1978.

§ 13150. Arrest; data required

For each arrest made, the reporting agency shall report to the Department of Justice, concerning each arrest, the applicable identification and arrest data described in Section 13125 * * * and fingerprints, except as otherwise provided by law.

(Added by Stats.1973, c. 992, p. 1913, § 1, operative July 1, 1978. Amended by Stats.1974, c. 790, p. 1722, § 3, operative July 1, 1978.)

Operative July 1, 1978.

1974 Amendment. Deleted requirement that modification data under § 13126 be reported.

Library References
Records ⇐ 3.
C.J.S. Records § 3.

§ 13151. Court dispositions; admissions or releases from detention facilities; time

The court dispositions of such cases shall be reported by the appropriate agency within 10 days of such disposition. Admissions or releases from detention facilities shall be reported within 10 days of such actions.

(Added by Stats.1973, c. 992, p. 1913, § 1, operative July 1, 1978.)

Operative July 1, 1978.

§ 13152. Felony complaint and subsequent action; minimum data

Each criminal justice agency filing a complaint subsequent to an arrest where a felony charge is recorded at the time of arrest or booking, and every criminal justice agency taking action towards an offender subsequent to such complaint, shall report on a form prescribed by the Department of Justice, * * * the appropriate data elements enumerated in Section 13125 * * * describing those actions initiated or carried out by the agency.

(Added by Stats.1973, c. 992, p. 1913, § 1, operative July 1, 1978. Amended by Stats.1974, c. 790, p. 1722, § 4, operative July 1, 1978.)

Operative July 1, 1978.

1974 Amendment. Deleted requirement that modification under § 13126 be reported.

§ 13153. Arrests for being found in public place under the influence of intoxicating liquor

* * * Criminal offender record information * * * relating to arrests for being found in any public place under the influence of intoxicating liquor under subdivision (f) of Section 647 shall not be reported or maintained by the Department of Justice without special individual justification.

(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978. Amended by Stats.1974, c. 790, p. 1722, § 5, operative July 1, 1978.)

Operative July 1, 1978.

1974 Amendment. Substituted "Criminal offender record information" for "Criminal justice agencies shall report such additional criminal offender record information as the Department of Justice requires, provided that dat-"

ARTICLE 4. INFORMATION SERVICE

Sec.

Article 4 was added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.

§ 13175. Identification, arrest and final disposition data; submission of personal identifier to department; time

When a criminal justice agency supplies fingerprints, or a fingerprint identification number, or such other personal identifiers as the Department of Justice deems appropriate, to the Department of Justice, such agency shall, upon request, be provided with identification, arrest, and, where applicable, final disposition data relating to such person within 72 hours of receipt by the Department of Justice.
(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.)

Operative July 1, 1978.

Library References
Records ⇐14.
C.J.S. Records § 35 et seq.

§ 13176. Criminal history; submission of personal identifier to department; time

When a criminal justice agency entitled to such information supplies fingerprints, or a fingerprint identification number, or such other personal identifiers as the Department of Justice deems appropriate, to the Department of Justice, such agency shall, upon request, be provided with the criminal history of such person, or the needed portion thereof, within 72 hours of receipt by the Department of Justice.
(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.)

Operative July 1, 1978.

§ 13177. Requirements for other public record information

Nothing in this chapter shall be construed * * * to * * * prohibit the Department of Justice from requiring criminal justice agencies to report * * * any information * * * which is required by any other statute to be reported to the department.

(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978. Amended by Stats.1974, c. 790, p. 1722, § 6, operative July 1, 1978.)

ARTICLE 5. ACCESS TO INFORMATION

Sec.

Article 5 was added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.

§ 13200. Right of authorized access to individual record information not affected

Nothing in this chapter shall be construed to affect the right of access of any person or public agency to individual criminal offender record information that is authorized by any other provision of law.
(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.)

Operative July 1, 1978.

Library References
Records ⇐14.
C.J.S. Records § 35 et seq.

§ 13201. Access to individual record information only if authorized by law

Nothing in this chapter shall be construed to authorize access of any person or public agency to individual criminal offender record information unless such access is otherwise authorized by law.
(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.)

Operative July 1, 1978.

§ 13202. Public agencies and research bodies; aggregated information; removal of individual identification; costs

Every public agency or research body immediately concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders shall be provided with such aggregated criminal offender record information as is required for the performance of its duties, or the execution of research projects relating to the activities of criminal justice agencies or changes in legislative or executive policies, insofar as the technical or financial resources of statistical agencies permit, provided that all material identifying individuals has been removed, and provided that such agency or body pays the cost of the processing of such data when necessary.
(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.)

Operative July 1, 1978.

ARTICLE 6. LOCAL SUMMARY CRIMINAL HISTORY INFORMATION

Sec.

Article 6 was added by Stats.1975, c. 1222, p. —, § 6, operative July 1, 1978.

§ 13300. Furnishing to authorized persons; fingerprints on file without criminal history; fees

(a) As used in this section:
(1) "Local summary criminal history information" means the master record of information compiled by any local criminal justice agency pursuant to Chapter 2 (com-

mencing with Section 13100), Title 3 of Part 4 of the Penal Code pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.

(2) "Local summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency.

(3) "Local agency" means a local criminal justice agency.

(b) A local agency shall furnish local summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (b) of Section 830.2, subdivisions (a), (b), and (k) of Section 830.3, subdivisions (a), (b), and (c) of Section 830.5, and Section 830.5a.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(11) The subject of the local summary criminal history information.

(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(c) The local agency may furnish local summary criminal history information, upon a showing of a compelling need, to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the local agency supplies such data, it shall furnish a copy of such data the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when such information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the local summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states, or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation.

(d) Whenever an authorized request for local summary criminal history information pertains to a person whose fingerprints are on file with the local agency and the local agency has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever local summary criminal history information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the local agency shall charge the person or entity making the request a fee which it determines to be sufficient to reimburse the local agency for the cost of furnishing such information, provided that no fee shall be charged to any public law enforcement agency for summary criminal history information furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer, or criminal investigator. Any state agency required to pay a fee to the local agency for information received under this section may charge the applicant a fee sufficient to reimburse the agency for such expense.

(f) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(Added by Stats.1975, c. 1222, p. —, § 6, operative July 1, 1978.)

Operative July 1, 1978.

Section 7 of Stats.1975, c. 1222, p. —, provides: "Section 6 of this act shall become operative on July 1, 1978."

Library References
Criminal Law ⇨1222.
C.J.S. Criminal Law § 2008 et seq.
Words and Phrases (Perm.Ed.)

§ 13301. "Record"; "a person authorized by law to receive a record" defined

As used in this article

(a) "Record" means the master local summary criminal history information as defined in subdivision (a) of Section 13300, or a copy thereof.

(b) "A person authorized by law to receive a record" means any person or public agency authorized by a court, statute, or decisional law to receive a record.

(Added by Stats.1975, c. 1222, p. —, § 6, operative July 1, 1978.)

§ 13302. Furnishing to unauthorized person by employee of local agency

Any employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.
(Added by Stats.1975, c. 1222, p. —, § 6, operative July 1, 1978.)

Operative July 1, 1978.

§ 13303. Furnishing to unauthorized person by authorized person

Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.
(Added by Stats.1975, c. 1222, p. —, § 6, operative July 1, 1978.)

Operative July 1, 1978.

§ 13304. Receipt, purchase or possession by unauthorized person

Any person, except those specifically referred to in Section 1070 of the Evidence Code, who, knowing he is not authorized by law to receive a record or information obtained from a record, knowingly buys, receives, or possesses the record or information is guilty of a misdemeanor.
(Added by Stats.1975, c. 1222, p. —, § 6, operative July 1, 1978.)

Operative July 1, 1978.

§ 13305. Statistical data, data for apprehension of purported criminal, and data in public records; authorized use

(a) It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(b) It is not a violation of this article to disseminate information obtained from a record for the purpose of assisting in the apprehension of a person wanted in connection with the commission of a crime.

(c) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.
(Added by Stats.1975, c. 1222, p. —, § 6, operative July 1, 1978.)

§ 13800. Definitions

As used in this title:

(a) "Council" means the California Council on Criminal Justice.

(b) "Office" means the Office of Criminal Justice Planning.

(c) "Local boards" means local criminal justice planning boards.

(d) "Federal acts" means the Federal Omnibus Crime Control and Safe Streets Act of 1968, the Federal Juvenile Delinquency Prevention and Control Act of 1968, and any act or acts amendatory or supplemental thereto.

(Added by Stats.1973, c. 1047, p. 2071, § 2.)

§ 13801. Limitations on powers

Nothing in this title shall be construed as authorizing the council, the office, or the local boards to undertake direct operational criminal justice responsibilities.

(Added by Stats.1973, c. 1047, p. 2071, § 2.)

Former section 13801 was repealed by Stats.1973, c. 1047, p. 2071, § 1.

Derivation: Former section 13807, added by Stats.1967, c. 1661, p. 4042, § 3.

§§ 13802 to 13807. Repealed by Stats.1973, c. 1047, p. 2071, § 1

Prior to repeal, section 13806 was amended by Stats.1972, c. 618, p. 1143, § 122.

CHAPTER 2. CALIFORNIA COUNCIL ON CRIMINAL JUSTICE

Sec.

13810. Creation; membership; chairman.
13811. Meetings; restriction on annual number; subcommittees.
13812. Compensation; expenses; staff support.
13813. Supervision of state planning agency; federal aid; expenditures; review.

Chapter 2 was added by Stats.1973, c. 1047, p. 2071, § 2.

§ 13810. Creation; membership; chairman

There is hereby created in the state government the California Council on Criminal Justice, which shall be composed of the following members: the Attorney General; the Administrative Director of the Courts; * * * 19 members appointed by the Governor, including the Commissioner of the Department of the Highway Patrol, the Director of the Department of Corrections, the Director of the Department of the Youth Authority, and the State Public Defender * * *; * * * eight members appointed by the Senate Rules Committee; and * * * eight members appointed by the Speaker of the Assembly.

The remaining appointees of the Governor shall include different persons from each of the following categories: a district attorney, a sheriff, a county public defender, a county probation officer, a member of a city council, a member of a county board of supervisors, a faculty member of a college or university qualified in the field of criminology, police science, or law, a person qualified in the field of criminal justice research and * * * six private citizens, including a representative of a citizens, professional, or community organization. The Senate Committee on Rules shall include among its appointments different persons from each of the following categories: a member of the Senate Committee on Judiciary, a representative of the counties, a representative of the cities, a judge designated by the Judicial Council, and * * * four private citizens, including a representative of a citizens, professional, or community organization. The Speaker of the Assembly shall include among his appointments different persons from each of the following categories: a representative of the counties, a representative of the cities, a member of the Assembly Committee on Criminal Justice, a chief of police, a peace officer, and * * * three private citizens, including a representative of a citizens, professional, or community organization directly related to delinquency prevention.

The Governor shall select a chairman from among the members of the council.

(Added by Stats.1973, c. 1047, p. 2071, § 2. Amended by Stats.1974, c. 1022, p. 2229, § 1, urgency, eff. Sept. 23, 1974; Stats.1975, c. 1230, p. —, § 1; Stats.1976, c. 1432, p. —, § 1.)

Derivation: Former section 13800, added by Stats.1967, c. 1661, p. 4042, § 3, amended by Stats.1968, c. 1386, p. 2721, § 2; Stats. 1969, c. 1211, p. 2351, § 1.

Library References
States ⇐45.
C.J.S. States §§ 52, 66.

§ 13811. Meetings; restriction on annual number; subcommittees

The council shall meet no more than 12 times per year.

The council may create subcommittees of its own membership and each subcommittee shall meet as often as the subcommittee members find necessary. It is the intent of the Legislature that all council members shall actively participate in

all council deliberations required by this chapter. Any member who misses three consecutive meetings or who attends less than 50 percent of the council's regularly called meetings in any calendar year for any cause except severe temporary illness or injury shall be automatically removed from the council.
(Added by Stats.1973, c. 1047, p. 2072, § 2.)

§ 13812. Compensation; expenses; staff support

Members of the council shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred by them in the performance of their duties under this title. No compensation or expenses shall be received by the members of any continuing task forces, review committees or other auxiliary bodies created by the council who are not council members, except that persons requested to appear before the council with regard to specific topics on one or more occasions shall be reimbursed for the travel expenses necessarily incurred in fulfilling such requests.

The Advisory Committee on Juvenile Justice and Delinquency Prevention appointed by the Governor pursuant to federal law may be reimbursed by the Office of Criminal Justice Planning for expenses necessarily incurred by the members. Staff support for the committee will be provided by the Office of Criminal Justice Planning.

(Added by Stats.1973, c. 1047, p. 2072, § 2. Amended by Stats.1975, c. 1230, p. —, § 2.)

Derivation: Former section 13803, added by Stats.1967, c. 1661, p. 4042, § 3.

Library References
States ⇐67.
C.J.S. States §§ 89 to 99.

§ 13813. Supervision of state planning agency; federal aid; expenditures; review

The council shall act as the supervisory board of the state planning agency pursuant to federal acts. It shall annually review and approve, or review, revise and approve, the comprehensive state plan for the improvement of criminal justice and delinquency prevention activities throughout the state, shall establish priorities for the use of such funds as are available pursuant to federal acts, and shall approve the expenditure of all funds pursuant to such plans or federal acts; provided that the approval of such expenditures may be granted to single projects or to groups of projects.
(Added by Stats.1973, c. 1047, p. 2072, § 2. Amended by Stats.1975, c. 1230, p. —, § 3.)

Derivation: Former section 13806, added by Stats.1967, c. 1661, p. 4042, § 3.

Library References
States ⇐67.
C.J.S. States §§ 58, 66.

CHAPTER 3. OFFICE OF CRIMINAL JUSTICE PLANNING

Sec.
13820. Creation; executive director; appointment.
13821. Executive director; appointment of staff; administration of office.
13822. Cooperation from state and political subdivisions.
13823. Powers and duties.
13824. Dissemination of information; eligibility of projects for funds.

Chapter 3 was added by Stats.1973, c. 1047, p. 2073, § 2.

§ 13820. Creation; executive director; appointment

There is hereby created in the state government the Office of Criminal Justice Planning. The office shall be administered by an executive director, who shall be appointed by, and be responsible to, the Governor, and hold office at the pleasure of the Governor. The executive director shall be in sole charge of the administration of the office.

(Added by Stats.1973, c. 1047, p. 2073, § 2.)

Library References
States ⇐45.
C.J.S. States §§ 52, 66.

Asterisks * * * indicate deletions by amendment

§ 13821. Executive director; appointment of staff; administration of office

The executive director may appoint such deputies, assistants and other officers and employees and consultants as he may deem necessary and prescribe their powers and duties. The executive director shall establish policies and procedures for governing the internal operation of the office and coordination with local planning agencies, grant recipients and state and local officials.

(Added by Stats.1973, c. 1047, p. 2073, § 2.)

Library References
States ⟨⟩50.
C.J.S. States §§ 49, 69.

§ 13822. Cooperation from state and political subdivisions

The executive director may request and receive from any department or agency of the state or any political subdivision thereof such assistance, information and data as will enable him to carry out his functions and duties.

(Added by Stats.1973, c. 1047, p. 2073, § 2.)

Library References
States ⟨⟩67.
C.J.S. States §§ 58, 66.

§ 13823. Powers and duties

(a) In cooperation with local boards, the office shall:

(1) Develop with the advice and approval of the council, the comprehensive statewide plan for the improvement of criminal justice and delinquency prevention activity throughout the state.

(2) Define, develop and correlate programs and projects for the state criminal justice agencies.

(3) Receive and disburse federal funds, perform all necessary and appropriate staff services required by the council, and otherwise assist the council in the performance of its duties as established by federal acts.

(4) Develop comprehensive, unified and orderly procedures to insure that all local plans and all state and local projects are in accord with the comprehensive state plan, and that all applications for grants are processed efficiently.

(5) Cooperate with and render technical assistance to the Legislature, state agencies, units of general local government, combinations of such units, or other public or private agencies, organizations or institutions in matters relating to criminal justice and delinquency prevention.

(6) Conduct evaluation studies of the programs and activities assisted by the federal acts.

(b) The office may

(1) Collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of criminal justice in the state.

(2) Perform other functions and duties as required by federal acts, rules, regulations or guidelines in acting as the administrative office of the state planning agency for distribution of federal grants.

(Added by Stats.1973, c. 1047, p. 2073, § 2. Amended by Stats.1975, c. 1230, p. —, § 4.)

1. In general
Grants made by the office of criminal justice planning to units of local government and state and private agencies are not contracts as those described in Gov.C. § 14780 and need not be submitted to the department of general services for approval. 58 Ops.Atty.Gen. 586, 8-14-75.

§ 13824. Dissemination of information; eligibility of projects for funds

A brief description of all projects eligible for a commitment of council funds shall be made available to the public through a publication of the council having statewide circulation at least 30 days in advance of the meeting at which funds for such project can be committed by vote of the council.

(Added by Stats.1973, c. 1047, p. 2073, § 2.)

CHAPTER 4. CRIMINAL JUSTICE PLANNING COMMITTEE FOR STATE JUDICIAL SYSTEM

Sec.
13830. Creation; membership; legislative findings.
13831. Request of council for advice and assistance.
13832. Consultation with and advice to the office of criminal justice planning.
13833. Expenses; reimbursement from federal funds.
13834. Annual report to governor and legislature.

Chapter 4 was added by Stats.1973, c. 1047, p. 2074, § 2.

§ 13830. Creation; membership; legislative findings

There is hereby created in state government a Judicial Criminal Justice Planning Committee of seven members. The Judicial Council shall appoint the members of the committee who shall hold office at its pleasure. In this respect the Legislature finds as follows:

(a) The California court system has a constitutionally established independence under the judicial and separation of power clauses of the State Constitution.

(b) The California court system has a statewide structure created under the Constitution, state statutes and state court rules, and the Judicial Council of California is the constitutionally established state agency having responsibility for the operation of that structure.

(c) The California court system will be directly affected by the criminal justice planning that will be done under this title and by the federal grants that will be made to implement that planning.

(d) For effective planning and implementation of court projects it is essential that the executive Office of Criminal Justice Planning have the advice and assistance of a state judicial system planning committee.

(Added by Stats.1973, c. 1047, p. 2074, § 2.)

Library References
States ⇨45.
C.J.S. States §§ 52, 66.

§ 13831. Request of council for advice and assistance

The California Council on Criminal Justice may request the advice and assistance of the Judicial Criminal Justice Planning Committee in carrying out its functions under Chapter 2 of this title.

(Added by Stats.1973, c. 1047, p. 2074, § 2.)

§ 13832. Consultation with and advice to the office of criminal justice planning

The Office of Criminal Justice Planning shall consult with, and shall seek the advice of, the Judicial Criminal Justice Planning Committee in carrying out its functions under Chapter 3 of this title insofar as they affect the California court system.

In addition, any grant of federal funds made or approved by the office which is to be implemented in the California court system shall be submitted to the Judicial Criminal Justice Planning Committee for its review and recommendations before being presented to the California Council on Criminal Justice for its action.

(Added by Stats.1973, c. 1047, p. 2074, § 2.)

§ 13833. Expenses; reimbursement from federal funds

The expenses necessarily incurred by the members of the Judicial Criminal Justice Planning Committee in the performance of their duties under this title shall be paid by the Judicial Council, but it shall be reimbursed by the Office of Criminal Justice Planning to the extent that federal funds can be made available for that purpose. Staff support for the committee's activities shall be provided by the Judicial Council, but the cost of that staff support shall be reimbursed by the Office of Criminal Justice Planning to the extent that federal funds can be made available for that purpose.

(Added by Stats.1973, c. 1047, p. 2074, § 2.)

Asterisks * * * indicate deletions by amendment

RETENTION AND PURGING OF DEPARTMENT OF JUSTICE RECORDS

The California Department of Justice in its continuing effort to improve the quality of service to the criminal justice system and to afford maximum protection to the rights of privacy of all our citizens has adopted several new policies relating to the submission, maintenance, length of retention, and purging of records concerning the arrest of individuals and the clearance of applicants.

The record purge and retention criteria were discussed and modified at review meetings and public hearings held throughout the state during 1973. The department solicited comments and recommendations from virtually all governmental agencies and professional organizations associated with the criminal justice system, as well as from the public at large.

CRIMINAL RETENTION PERIODS

As a basic rule, all entries on a criminal record (including out-of-state arrests) must meet purge criteria in order for the criminal record to be purged. The entire record will be retained if any criminal entry does not meet purge criteria.

A. Zero Retention Period

1. Subjects arrested for drunk, 647(f) PC, unless the local reporting agency indicates that the arrest was for being under the influence of drugs; i.e., 647(f) (drugs)
2. Subjects arrested for violation of local ordinances
3. Subjects arrested for minor traffic offenses. A minor traffic offense is defined as any traffic offense which is not listed in Attachment I.
4. Subjects arrested for such minor or nonspecific offenses such as "investigation", "suspicion" "lodger", "inquiry", or "disorderly", except when the reporting agency provides a specific code citation to a retainable offense. (See Attachment II)

B. Five-Year Retention Period

1. Misdemeanor arrests not resulting in a conviction or for which no disposition was received - retention period begins on the date of arrest
2. Retainable arrests which are later termed "detention only" under 849(b) PC. Retention period begins on the date of "detention" (arrest)
3. Retainable misdemeanor arrests resulting in a conviction for a nonretainable offense - retention period begins on the date of arrest

C. Seven-Year Retention

1. Misdemeanor arrests resulting in a conviction with the retention period commencing on the date of arrest
2. Arrests not resulting in a conviction or for which no disposition was received for an offense where a prior constitutes a felony, for an offense which would be a felony depending upon disposition, and for felonies - retention period is to begin on the date of arrest
3. Arrests for felonies resulting in a conviction for a misdemeanor offense - retention period is to begin on the date of arrest

D. Modified Lifetime Retention Period

Arrests resulting in a conviction for an offense where a prior constitutes a felony, for an offense which would be a felony depending upon disposition, and for felonies.

When the record indicates the subject has reached age 70 and has had no arrests since age 60, the record will be purged. If the individual has been arrested after age 60, his record will be maintained for the applicable retention period if it extends past the age of 70; or, in the case of a felony conviction, for a ten-year period commencing with the date of release from supervision.

EXCEPTIONS TO BASIC CRIMINAL RETENTION PERIODS

Generally, in the area of exceptions, the basic rule, "all entries must meet purge criteria in order for a criminal record to be purged" still applies. This is not true of "E" or "F" following.

It is noteworthy, too, that the area of exceptions is where further refinement and change to criteria is most likely to occur.

A. Records of subjects convicted of offenses requiring registration under Section 290 of the Penal Code will be retained for the life of the individual. 290 PC purge criteria does not apply to records of persons who obtain a certificate of rehabilitation as specified under 290.5 PC.

B. Records of subjects sentenced to prison on felony convictions, then paroled for life will be maintained until the subject has reached age 80. At age 80, the bureau will inquire of the California Department of Corrections as to the subject's status. Retention reverts to age 70 if discharged from parole.

C. Records of juveniles committed by a juvenile court to a California Youth Authority facility will be retained until age 25 or 5 years from date of release, whichever is longer. Commitments by an adult court to CYA will be retained as a conviction for the misdemeanor or felony charge. Records of juveniles not committed to CYA will be retained for 7 years from the date of arrest. The department's policy for establishing a criminal history record on juveniles is:

1. No reports of arrests for Welfare and Institutions Code 600 and 601 will be retained.
2. No WIC 602's for nonserious offenses listed on Attachment II will be retained, except for CYA commitments.
3. All reports of arrests for WIC 602 with serious offenses and commitment to CYA are presently being maintained in the manual file, but are not being entered into the automated system.

D. When a record exists in our files showing only out-of-state entries, the record will be immediately purged, except for a conviction of an offense where, if committed in California, would be registrable under 290 PC.

E. Records of deceased persons will be purged one year after the date of death. Homicide victims will be purged three years after the date of death.

F. Persons who are wanted by law enforcement agencies will be treated as follows:

1. All records of "wants" entered into the automated wanted persons system will be retained as long as the want is active.
2. Wants not entered into automated wanted persons system will be referred to the Department of Justice Command Center. They will contact the field agency requesting the status of the want.
3. Cancelled wants will not be retained.

APPLICANT RETENTION PERIODS

The retention period for applicant records is determined by the type of response provided. The bureau will respond with either a current record only or with a current record plus notification of any subsequent arrest information. Subsequent action notifications are provided to state agencies with contracts specifying such notifications, to law enforcement agencies on sworn and nonsworn employees, and to agencies handling the application for licenses discussed below.

Records maintained solely because of applicant entries will be stripped of criminal entries when all criminal charges are purgeable. Records will not be stripped until contributing local agencies are notified.

A. Zero Retention Period - Applicant clearance only requests.

B. Five-Year Retention Period - Applications for the following licenses or permits are purgeable five years after the date of expiration or revocation of the license or permit:

1. License to carry a concealed weapon
2. Destructive device permit
3. Machine gun permits or license
4. Sawed-off shotgun permit or license
5. Tear gas permit or license

Any application for a license or permit which is refused will be retained for a five-year period. If several applications are on the rap sheet, the five-year retention period shall extend from the date of expiration or revocation of the last license application.

C. Age 70 Retention - Law enforcement employee records are purgeable when the subject reaches age 70 and all other purge criteria are met. Local agencies should notify the Bureau of Identification of those applications which do not result in employment.

D. Age 80 Retention - Applicant fingerprint cards submitted by state agencies with whom we have a subsequent notifications contract will be retainable until the subject reaches age 80.

REGULATIONS GOVERNING THE RELEASE OF CRIMINAL OFFENDER RECORD INFORMATION IN THE STATE OF CALIFORNIA

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Gov. Code, Title 2, Div. 3, Part 1, Chapter 4.5) and pursuant to the authority vested by Penal Code Section 11077 and to implement, interpret, and make specific Penal Code Sections 11075 through 11081, the Department of Justice hereby adopts regulations in Chapter 1, Title 11, California Administrative Code, as follows:

(1) Adopts new Subchapter 7, CRIMINAL OFFENDER RECORD INFORMATION SECURITY

(2) Adopts new Article 1 of Subchapter 1 to read:

Article 1. Mandatory Securing of Criminal Offender Record Information

700. Scope. In accordance with Sections 11075-11081 of the Penal Code, this article shall insure a measure of uniformity in the handling of criminal offender record information.

701. Definitions. For the purposes of this article, the following definitions shall apply whenever the terms are used.

(a) "Criminal Justice Agency" means a public agency or component thereof which performs a criminal justice activity as its principal function.

(b) "Authorized Person or Agency" means any person or agency authorized by court order, statute, or decisional law to receive criminal offender record information.

(c) "Criminal Offender Record Information" means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release. Such information shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto.

(d) "Right to Know" means the right to obtain criminal offender record information pursuant to court order, statute, or decisional law.

(e) "Need to Know" means the necessity to obtain criminal offender record information in order to execute official responsibilities.

(f) "Record Check" means obtaining the most recent rap sheet from the California Department of Justice.

702. Compliance with State Regulations

(a) Each authorized agency shall adopt written regulations regarding the security of criminal offender record information which comply with these regulations of the State of California. Authorized agencies may adopt more stringent provisions than the State regulations require.

(b) The California Department of Justice shall make every reasonable effort to see that each out-of-state agency or system with which it exchanges criminal offender record information conforms to these regulations.

(c) The California Department of Justice shall conduct audits of authorized persons or agencies using criminal offender record information to insure compliance with the State regulations.

(d) Each authorized agency shall appoint a person to act as its criminal records security officer. The person so appointed will be given the authority and responsibility for seeing that these regulations are adhered to.

(e) Authorized persons or agencies violating these regulations may lose direct access to criminal offender record information maintained by the California Department of Justice.

703. Release of Criminal Offender Record Information

(a) Each authorized agency shall designate specific personnel to release criminal offender record information pursuant to these regulations. Only designated personnel may release such information.

(b) Criminal offender record information may be released, on a need-to-know basis, only to persons or agencies authorized by court order, statute, or decisional law to receive criminal offender record information.

(c) Each authorized agency shall keep a record of each release of California Department of Justice rap sheets or information derived therefrom. The record shall be retained and available for inspection for a period of not less than three years from the date of release. This record shall contain the date of release, name of requesting agency (and name of requesting person, if possible), name of receiving agency (and name of receiving person, if possible), information given and how the information was transmitted.

The requirement for recording each release need not apply to routine in-house procedures if the location of any specific California Department of Justice rap sheet is easily determinable through other records such as case assignment records, arrest registers, or other formal standard procedures. If a California Department of Justice rap sheet is included as a part of a document package (such as a complaint, probation pre-sentence report, etc.) and a record of the disposition or location of those documents is maintained, that record will suffice as a record of the release of the California Department of Justice rap sheet.

(d) Record checks shall be conducted on all personnel hired after July 1, 1975, who have access to criminal offender record information.

704. Juvenile Records

Nothing in these regulations is intended to alter existing statutory or decisional law or court policy regarding the release of juvenile offender records.

705. Review of Criminal Offender Record Information

A person may review his California Department of Justice record for the purpose of challenge or correction in conformity with California Penal Code Section 11120 through 11127.

706. Protection of Criminal Offender Record Information

Authorized agencies shall take reasonable steps to protect criminal offender record information from unauthorized access.

707. Automated Systems

(a) Automated systems handling criminal offender record information and the information derived therefrom shall be secure from unauthorized access, alteration, deletion, or release. The computer system and terminals shall be located in secure premises. Non-criminal justice agencies shall not receive criminal offender record information directly from an automated criminal justice system.

(b) Record checks shall be conducted on all personnel hired after July 1, 1975, who have access to the computer system, its terminals, or the stored criminal offender record information.

(c) Each authorized agency shall keep a record of each release of criminal offender record information from the automated system. The record shall be retained and available for inspection for a period of not less than three years from the date of release. This record shall contain the date of release, the requesting terminal identifier, the receiving terminal identifier, and the information given.

708. Destruction of Criminal Offender Record Information

(a) When criminal offender record information is destroyed, the destruction shall be carried out to the extent that the identity of the subject can no longer reasonably be ascertained. When criminal offender record information is destroyed outside of the authorized agency, a person designated by the agency shall witness the destruction.

(b) Prior to release or reassignment of any electronic storage media containing criminal offender record information to any non-criminal justice purpose, the criminal offender record information shall be completely erased from the media.

(c) Printouts of criminal offender record information obtained through system development, test, or maintenance shall be destroyed at the completion of the function or purpose for which the printout was obtained.

709. Reproduction of Criminal Offender Record Information

Criminal offender record information shall be reproduced only within the physical facilities of an authorized agency, under the supervision of a person designated by the agency, or under a contract provision that no information from such records will be divulged to any unauthorized person or agency.

710. Training

(a) Each authorized agency shall require that all personnel designated to release criminal offender record information participate in one of the following:

(1) Attend training sessions in the proper use and control of criminal offender record information, to be approved by the California Department of Justice at central locations; or

(2) Attend training sessions in the proper use and control of criminal offender record information, to be approved by the California Department of Justice at the authorized agency's location; or

(3) Familiarize themselves with the training materials in the proper use and control of criminal offender record information, to be provided by the California Department of Justice.

(b) Training need not be limited to those persons designated to release information.

711. Disclaimer

There are no State mandated local costs in this regulation that require reimbursement under Section 2231 of the Revenue and Taxation Code because these regulations implement and make specific a mandate previously enacted by statute (Chapter 1437, p. 3148, Section 1, 1972).

The following Government Codes contains disqualification or denial of license statements.

Business and Professions Code

5100(3)	7069(b), (c), (d)	10,562(b)
5552(a)	7431(j)	2761(f)
5577	1679	3107
6545(c)	1680	4354
6546(c)	5675	2635
6576	5676	266
5558	7351(b)	2361(d), (e)
8025(a)	7668(d), (j)	7528(c), (d)
1000-10(b)	6751(a)(1), (b)(1)	4521(f)
9540.3	6775(a), (b)	8568(d)
1320(a), (k)	17,820	4882(b)

Vehicle Code

2541(f)	2542	11703(d)
11802(b)(2)	11902(b)(2)	11509
11703(d)	11802(b)(2)	11902(b)(2)
11114(a)	11110(h)	

Government Code

18935(f), (g)	1031

Public Utility Code

5135

Education Code

12911	13174(c), (e)

Other Government Codes which allow access to State Rap Sheet by non-criminal justice agencies are:

Penal Code

270	11105(b(12)	11105(c)(5)
11105(b)(7), (8), (9), (10)		

Welfare and Institutions Code

6778	4351(a)	11478.5
4312	6307	576.5
600	625.5	

Military & Veterans Code

143	146

Harbor & Navigation Code

71.2

Public Utilities Code

8226	12819

Health & Safety Code

8325	1511	1522

Education Code

15832	12912	12912.5

Civil Code

226.55

30-10-101. Offices - inspection of records - failure to comply - penalty. (1) Every sheriff, county clerk, county treasurer, and clerks of the district and county courts shall keep their respective offices at the county seat of the county and in the office provided by the county, if any such has been provided; or, if there is none provided, then at such place as the board of county commissioners shall direct. All books and papers required to be in their offices shall be open to the examination of any person, but no person, except parties in interest, or their attorneys, shall have the right to examine pleadings or other papers filed in any cause pending in such court.

(2) Any person or corporation and their employees engaged in making abstracts or abstract books shall have the right, during usual business hours and subject to such rules and regulations as the officer having the custody of such records may prescribe, to inspect and make memoranda, copies, or photographs of the contents of all such books and papers for the purpose of their business; but any such officer may make reasonable and general regulations concerning the inspection of such books and papers by the public. If, for the purpose of making such photographs, it becomes necessary to remove such records from the room where they are usually kept to some other room in the courthouse where such photographic apparatus may be installed for such purpose, the county clerk, in his discretion, may charge to the person or corporation making such photographic reproductions, a fee of one dollar per hour for the service of the deputy who has charge of such records while they are being so photographed; but such fees shall not be charged to one person or corporation unless the same fee is likewise charged to every person or corporation photographing such records.

(3) If any person or officer refuses or neglects to comply with the provisions of this section, he shall forfeit for each day he so refuses or neglects the sum of five dollars, to be collected by civil action, in the name of the people of the state of Colorado, and pay it into the school fund; but this shall not interfere with or take away any right of action for damages by any person injured by such neglect or refusal.

24-72-201. Legislative declaration. It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

Source: L. 68, p. 201, § 1; C.R.S. 1963, § 113-2-1.

24-72-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(2) "Official custodian" means and includes any officer or employee of the state or any agency, institution, or political subdivision thereof who is responsible for the maintenance, care, and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(3) "Person" means and includes any natural person, corporation, partnership, firm, or association.

(4) "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person; except that if the subject of the record is under legal disability, "person in interest" means and includes his parent or duly appointed legal representative.

(5) "Political subdivision" means and includes every county, city and county, city, town, school district, and special district within this state.

(6) "Public records" means and includes all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

(7) "Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.

24-72-203. Public records open to inspection. (1) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification he shall state in detail to the best of his knowledge and belief the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage and therefore not available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the records will be available for inspection.

Source: L. 68, p. 202, § 3; C.R.S. 1963, § 113-2-3.

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal. (1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(I) Records of investigations conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department or any investigatory files compiled for any other law enforcement purpose;

(II) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to the state personnel system or any similar system shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(III) The specific details of bona fide research projects being conducted by a state institution; and

(IV) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to the state or political subdivision; except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by the Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner thereof who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which he has obtained relative to the proposed acquisition of the property.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection (2) is allowed to any officer or employee of any newspaper, radio station, television station, or other person

or agency in the business of public dissemination of news or current events, it shall be allowed to all such news media.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(I) Medical, psychological, sociological, and scholastic achievement data on individual persons, exclusive of coroners' autopsy reports; but either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

(II) Personnel files, except applications and performance ratings; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise his work;

(III) Letters of reference;

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(V) Library and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions; and

(VI) Addresses and telephone numbers of students in any public elementary or secondary school.

(b) Nothing in this subsection (3) shall prohibit the custodian of records from transmitting data concerning the scholastic achievement of any student to any prospective employer of such student, nor shall anything in this subsection (3) prohibit the custodian of records from making available for inspection, from making copies, print-outs, or photographs of, or from transmitting data concerning the scholastic achievement or medical, psychological, or sociological information of any student to any law enforcement agency of this state, of any other state, or of the United States where such student is under investigation by such agency and the agency shows that such data is necessary for the investigation.

(c) Nothing in this subsection (3) shall prohibit the custodian of the records of a school, including any institution of higher education, or a school district from transmitting data concerning standardized tests, scholastic achievement, or medical, psychological, or sociological information of any student to the custodian of such records in any other such school or school district to which such student moves, transfers, or makes application for transfer, and the written permission of such student or his parent or guardian shall not be required therefor. No state educational institution shall be prohibited from transmitting data concerning standardized tests or scholastic achievement of any student to the custodian of such records in the school, including any state educational institution, or school district in which such student was previously enrolled, and the written permission of such student or his parent or guardian shall not be required therefor.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5) Any person denied the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the inspection of such record. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian personally to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

(6) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the district court of the district in which such record is located for an order permitting him to restrict such disclosure. Hearing on such application shall be held at the earliest practical time. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. In such action the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard.

Source: L. 68, p. 202, § 4; L. 69, pp. 925, 926, § § 1, 1; C.R.S. 1963, § 113-2-4.

PART 4
COLORADO BUREAU OF INVESTIGATION

24-32-401. Colorado bureau of investigation. There is hereby created an agency of state government which shall be known as the Colorado bureau of investigation, referred to in this part 4 as the "bureau", and which is placed under the department of local affairs of the state of Colorado as a division thereof.

Source: L. 67, p. 431, § 1; C.R.S. 1963, § 3-24-1; L. 68, p. 133, § 153.

24-32-402. Director - appointment. Subject to the provisions of article XII, section 13, of the state constitution, the executive director of the department of local affairs shall appoint a director of the bureau.

Source: L. 67, p. 431, § 2; C.R.S. 1963, § 3-24-2; L. 68, p. 133, § 154.

Cross reference. As to state personnel system, see § 13 of art. XII, Colo. Const.

24-32-403. Qualifications. The director shall be experienced in scientific methods for the detection of crime and in the enforcement of law and order. The director shall possess such other qualifications as may be specified by the state personnel director after consultation with the executive director of the department of local affairs.

Source: L. 67, p. 431, § 3; C.R.S. 1963, § 3-24-3; L. 68, p. 133, § 155.

24-32-404. Duties of the director. The director shall be the chief administrative officer of the bureau and shall also be an agent. He shall supervise and direct the administration and all other activities of the bureau. The director shall prescribe rules and regulations, not inconsistent with law, for the operation of the bureau and the conduct of its personnel and the distribution and performance of their duties.

Source: L. 67, p. 431, § 4; C.R.S. 1963, § 3-24-4; L. 68, p. 134, § 156.

24-32-405. Deputy director - appointment. Subject to the provisions of article XII, section 13, of the state constitution, the director of the bureau may appoint a deputy director, whose qualifications shall be those for an agent.

Source: L. 67, p. 431, § 5; C.R.S. 1963, § 3-24-5; L. 68, p. 134, § 157; L. 71, p. 112, § 1.

Cross reference. As to state personnel system, see § 13 of art. XII, Colo. Const.

24-32-406. Deputy director - duties. The deputy director shall serve as an agent and, at the request of the director or in his absence or disability, the deputy director shall perform all of the duties of the director, and when so acting, he shall have all of the powers of and be subject to all of the restrictions upon the director. In addition, he shall perform such other duties as may from time to time be assigned to him by the director.

Source: L. 67, p. 431, § 6; C.R.S. 1963, § 3-24-6.

24-32-407. Bureau personnel - appointment. Subject to the provisions of article XII, section 13, of the state constitution, the director of the bureau shall appoint agents and other employees necessary to conduct an efficient bureau.

Source: L. 67, p. 432, § 7; C.R.S. 1963, § 3-24-7; L. 68, p. 134, § 158; L. 71, p. 112, § 2.

Cross reference. As to state personnel system, see § 13 of art. XII, Colo. Const.

24-32-408. Agents - qualifications. The director of the bureau shall appoint persons of honesty, integrity, and outstanding ability as agents. Agents shall possess such qualifications as may be specified by the state personnel director after consultation with the director of the bureau.

Source: L. 67, p. 432, § 8; C.R.S. 1963, § 3-24-8; L. 68, p. 134, § 159; L. 71, p. 112, § 3.

24-32-409. Agents - duties - powers. Agents shall perform duties in the investigation, detection, and prevention of crime and the enforcement of the criminal laws of the state of Colorado. Only agents of the bureau shall be vested with the powers of peace officers of the state of Colorado and have all the powers of any sheriff, police, or other peace officer.

Source: L. 67, p. 432, § 9; C.R.S. 1963, § 3-24-9.

24-32-410. Agents - limitation of powers. Powers vested in agents by this part 4 shall in no way usurp or supersede the powers of the local sheriffs, police, and other law enforcement officers except that this limitation shall not apply to functions of the bureau described in section 24-32-412 (1) (c) and (1) (d).

Source: L. 67, p. 432, § 10; C.R.S. 1963, § 3-24-10; L. 71, p. 113, § 4.

Cross reference. As to functions of bureau, see § 24-32-412.

24-32-411. Agents - defenses - immunities. Any agent required to perform any official function under the provisions of this part 4 shall be entitled to the protection, defense, or immunities provided by statute to safeguard a peace officer in the performance of official acts.

Source: L. 67, p. 432, § 11; C.R.S. 1963, § 3-24-11.

Cross reference. As to official functions of bureau, see § 24-32-412.

24-32-412. Functions of bureau. (1) The bureau has the following authority:

(a) When assistance is requested by any sheriff, chief of police, or chief law enforcement officer and with the approval of the director, to assist such local law enforcement authority in the investigation and detection of crime and in the enforcement of the criminal laws of the state;

(b) When assistance is requested by any district attorney and upon approval by the director, to assist that district attorney in preparing the prosecution of any criminal case in which the bureau had participated in the investigation under the provisions of this part 4;

(c) To establish and maintain fingerprint and other identification files and records and to arrange for scientific laboratory services and facilities for assistance to law enforcement agencies, utilizing existing facilities and services wherever feasible;

(d) To investigate suspected criminal activity when directed by the governor;

(e) To procure any records furnished by any law enforcement agency of the state of Colorado, including local law enforcement agencies, at the expense of the bureau;

(f) To enter into and perform contracts with the department of social services for the investigation of any matters arising under article 5 of title 14, C.R.S. 1973, the "Revised Uniform Reciprocal Enforcement of Support Act", or a substantially similar enactment of another state.

(2) In order to enable the bureau to carry out the functions enumerated in this section, it shall establish and maintain statewide communications programs consistent with communications programs and policies of the state communications coordinator.

(3) Any other provision of law to the contrary notwithstanding and except for title 19, C.R.S. 1973, on and after July 1, 1971, in accordance with a program to be established by the bureau, every law enforcement, correctional, and judicial entity, agency, or facility in this state shall furnish to the bureau, upon its request, all arrest, identification, and dispositional information; except that the provision of information by judicial entities, agencies, and facilities shall be under procedures to be established jointly by the state court administrator and the director of the Colorado bureau of investigation.

(4) The bureau is charged with the responsibility to investigate organized crime which cuts across jurisdictional boundaries of local law enforcement agencies, subject to the provisions of section 24-32-410.

Source: L. 67, p. 432, § 12; C.R.S. 1963, § 3-24-12; L. 71, pp. 113, 515, § § 5, 2.

Cross references. As to revised uniform reciprocal enforcement of support act, see § 14-5-101 et seq. As to children's code, see § 19-1-101 et seq. As to limitation of bureau's power, see § 24-32-410.

24-32-413. Credentials. The director shall issue to each agent of the bureau proper credentials and a badge of authority with the seal of the state of Colorado in the center thereof and the words "Colorado Bureau of Investigation" encircling said seal. Each agent of the bureau, when on duty, shall carry said badge upon his person. Such badges shall be serially numbered.

Source: L. 67, p. 432, § 13; C.R.S. 1963, § 3-24-13.

24-32-414. Rewards. No reward offered for the apprehension or conviction of any person or for the recovery of any property may be accepted by an employee or agent of the bureau.

Source: L. 67, p. 433, § 14; C.R.S. 1963, § 3-24-14.

24-30-602. Division of automated data processing. There is hereby created a division of automated data processing in the department of administration. The executive director of the department of administration shall appoint, pursuant to section 13 of article XII of the state constitution, a director of automated data processing as head of the division and also such other personnel as may be necessary for the efficient operation of the division.

Source: L. 68, p. 97, § 46; C.R.S. 1963, § 3-26-2.

24-30-606. Existing and new equipment, personnel, applications, systems, subject to approval of director. On and after July 1, 1968, no automated data processing equipment shall be purchased, leased, or otherwise acquired by any state department, institution, or agency, nor shall any new automated data processing personnel be added to the state service, nor shall any new applications, systems, or programs begin except upon the written approval of the director, nor shall any automated data processing equipment presently leased or operated by any state department, institution, or agency continue to be so leased or operated after July 1, 1969, unless certified by the director to be in accordance with the approved plan.

Source: L. 68, p. 98, § 46; C.R.S. 1963, § 3-26-6.

24-30-607. Reports. (1) On or before December 1 of each year, the director shall prepare and submit the following reports and such other information as he deems advisable, including budgetary requirements, to the governor and the general assembly:

(a) A report on the use and cost of all automated data processing equipment which is owned, leased, or operated by the state government, including the cost of acquiring or leasing such equipment and a detailed report on the annual cost of operating such equipment including the cost of personnel, supplies, and other expenses in connection therewith.

(b) A complete inventory of all automated data processing equipment which is presently on order or otherwise scheduled for use by the state government or which has been requested of the division by any agency pursuant to the provisions of section 24-30-606, together with an estimate of the annual cost of acquiring or leasing such equipment and a detailed estimate of the annual cost of operating such equipment including the cost of personnel, supplies, and other expenses in connection therewith and the director's recommendations thereon.

(c) A report listing by agency the existing and requested uses, applications, and programs of automated data processing including such explanation and analysis as the director may deem advisable together with his recommendations thereon and specifically including, with respect to requested uses, applications, and programs, his recommendations for priorities in implementing the same.

(d) A report on the adequacy and efficiency of the state government's automated data processing equipment, uses, applications, and programs together with the director's recommendations thereon.

(2) (a) The director shall prepare and transmit annually, in the form and manner prescribed by the controller pursuant to the provisions of section 24-30-208, a report accounting to the governor and the general assembly for the efficient discharge of all responsibilities assigned by law or directive to the division of automated data processing.

(b) Publications by the director circulated in quantity outside the executive branch shall be issued in accordance with fiscal rules promulgated by the controller pursuant to the provisions of section 24-30-208.

Source: L. 68, p. 99, § 46; C.R.S. 1963, § 3-26-7.

HOUSE BILL NO. 1597. BY REPRESENTATIVES DeNier, Gustafson, Reeves, Showalter, Spano, Strahle, Winkler, Yost, Younglund, and Zakhem; also SENATOR Harding.

CONCERNING CRIMINAL JUSTICE RECORDS, AND PROVIDING FOR THE COLLECTION AND DISSEMINATION THEREOF.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 72 of title 24, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW PART to read:

PART 3

CRIMINAL JUSTICE RECORDS

24-72-301. Legislative declaration. (1) The general assembly hereby finds and declares that the maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern; and that, in defining and regulating those areas, only statewide standards in a state statute are workable.

(2) It is further declared to be the public policy of this state that criminal justice agencies shall maintain records of official actions, as defined in this part 3, and that such records shall be open to inspection by any person and to challenge by any person in interest, as provided in this part 3; and that all other records of criminal justice agencies in this state may be open for inspection as provided in this part 3 or as otherwise specifically provided by law.

24-72-302. Definitions. As used in this part 3, unless the context otherwise requires:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(1) "Arrest and criminal records information" means information reporting the arrest, indictment, or other formal filing of criminal charges against a person; the identity of the criminal justice agency taking such official action relative to an accused person; the date and place that such official action was taken relative to an accused person; the name, birth date, last known address, and sex of an accused person; the nature of the charges brought or the offenses alleged against an accused person; and one or more dispositions relating to the charges brought against an accused person.

(2) "Basic identification information" means the name, birth date, last known address, physical description, sex, and fingerprints of any person.

(3) "Criminal justice agency" means any court with criminal jurisdiction and any agency of the state or of any county, city and county, home rule city and county, home rule city or county, city, town, territorial charter city, governing boards of institutions of higher education, school district, special district, judicial district, or law enforcement authority which performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release, prosecution, defense, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of criminal-justice information.

(4) "Criminal justice records" means all books, papers, cards, photographs, tapes, recordings or other documentary materials, regardless of form or characteristics, which are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule.

(5) "Custodian" means the official custodian or any authorized person having personal custody and control of the criminal justice records in question.

(6) "Disposition" means a decision not to file criminal charges after arrest; the conclusion of criminal proceedings, including conviction, acquittal, or acquittal by reason of insanity; the dismissal, abandonment, or indefinite postponement of criminal proceedings; formal diversion from prosecution; sentencing, correctional supervision, and release from correctional supervision, including terms and conditions thereof; outcome of appellate review of criminal proceedings; or executive clemency.

(7) "Official action" means an arrest; indictment; charging by information; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition;

decision to grant, order, or terminate probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence.

(8) "Official custodian" means any officer or employee of the state or any agency, institution, or political subdivision thereof who is responsible for the maintenance, care, and keeping of criminal justice records, regardless of whether such records are in his actual personal custody and control.

(9) "Person" means any natural person, corporation, partnership, firm, or association.

(10) "Person in interest" means the person who is the primary subject of a criminal justice record or any representative designated by said person by power of attorney or notarized authorization; except that if the subject of the record is under legal disability, "person in interest" means and includes his parents or duly appointed legal representative.

24-72-303. Records of official actions required - open to inspection. (1) Each official action as defined in this part 3 shall be recorded by the particular criminal justice agency taking the official action. Such records of official actions shall be maintained by the particular criminal justice agency which took the action and shall be open for inspection by any person at reasonable times, except as provided in this part 3 or as otherwise provided by law. The official custodian of any records of official actions may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the requested record of official action of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the agency which has custody or control of the record in question.

(3) If the requested record of official action of a criminal justice agency is in the custody and control of the person to whom application is made, but is in active use or in storage and therefore not available at the time an applicant asks to examine it, the custodian shall forthwith notify the applicant of this fact in writing, if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the record will be available for inspection.

24-72-304. Inspection of criminal justice records. (1) Except for records of official actions which must be maintained and released pursuant to this part 3, all criminal justice records, at the discretion of the official custodian, may be open for inspection by any person at reasonable times, except as otherwise provided by law, and the official custodian of any such records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the requested criminal justice records are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the requested records are not in the custody and control of the criminal justice agency to which the request is directed, but are in the custody and control of a central repository for criminal justice records pursuant to law, the criminal justice agency to which the request is directed shall forward the request to the central repository. If such a request is to be forwarded to the central repository, the criminal justice agency receiving the request shall do so forthwith and shall so advise the applicant forthwith. The central repository shall forthwith reply directly to the applicant.

24-72-305. Allowance or denial of inspection - grounds - procedure - appeal. (1) The custodian of criminal justice records may allow any person to inspect such records or any portion thereof except on the basis of any one of the following grounds or as provided in subsections (2), (3), (4), or (5) of this section:

(a) Such inspection would be contrary to any state statute;

(b) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(2) Where the record is a record of an official action in which the individual is acquitted, or in which the charges are dismissed, or in which an arrest is not followed by a conviction within two years of arrest, it shall be released only to the person in interest or a criminal justice agency of this state or a similar agency of the United States government or any of the states of the United States of America.

(3) Where the record is a record of an official action

involving conviction for misdemeanors in which an individual has been free from criminal involvement for a period of five years following release from confinement or supervision, it shall be released only to the person in interest or a criminal justice agency of this state or a similar agency of the United States government or any of the states of the United States of America.

(4) Where the record is a record of an official action involving conviction for felonies in which an individual has been free from criminal involvement for a period of seven years following release from confinement or supervision, it shall be released only to the person in interest or a criminal justice agency of this state or a similar agency of the United States government or any of the states of the United States of America.

(5) On the ground that disclosure would be contrary to the public interest, and unless otherwise provided by law, the custodian may deny access to records of investigations conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department, or any criminal justice investigatory files compiled for any other law enforcement purpose.

(6) If the custodian denies access to any criminal justice record, the applicant may request a written statement of the grounds for the denial, which statement shall be provided to the applicant within seventy-two hours, which shall cite the law or regulation under which access is denied or the general nature of the public interest to be protected by the denial, and which shall be furnished forthwith to the applicant.

(7) Any person denied access to inspect any criminal justice record covered by this part 3 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why said custodian should not permit the inspection of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian to pay the applicant's court costs and attorney fees in an amount to be determined by the court. Upon a finding that the denial of inspection of a record of an official action was arbitrary or capricious, the court may also order the custodian personally to pay to the applicant a penalty in an amount not to exceed twenty-five dollars for each day that access was improperly denied.

24-72-306. Copies, print-outs, or photographs of criminal justice records - fees authorized. (1) Criminal justice agencies may assess reasonable fees, not to exceed actual costs including, but not limited to personnel and equipment, for the search, retrieval, and copying of criminal justice records and may waive

fees at their discretion. Where fees for certified copies or other copies, print-outs, or photographs of such records are specifically prescribed by law, such specific fees shall apply. Where the criminal justice agency is an agency or department of any county or municaplity, the amount of such fees shall be established by the governing body of the county or municipality.

(2) If the custodian does not have facilities for making copies, print-outs, or photographs of records which the applicant has the right to inspect, the applicant shall be granted access to the records for the purpose of making copies, print-outs, or photographs. The copies, print-outs, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but, if it is impractical to do so, the custodian may allow other arrangements to be made for this purpose. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, print-out, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, print-outs, or photographs and may charge the same fee for the services rendered by him or his deputy in supervising the copying, printing-out, or photographing as he may charge for furnishing copies under subsection (1) of this section.

24-72-307. Challenge to accuracy and completeness - appeals. (1) Any person in interest who is provided access to any criminal justice records pursuant to this part 3 shall have the right to challenge the accuracy and completeness of records to which he has been given access, insofar as they pertain to him, and to request that said records be corrected.

(2) If the custodian refuses to make the requested correction, the person in interest may request a written statement of the grounds for the refusal, which statement shall be furnished forthwith.

(3) In the event that the custodian requires additional time to evaluate the merit of the request for correction, he shall so notify the applicant in writing forthwith. The custodian shall then have thirty days from the date of his receipt of the request for correction to evaluate the request and to make a determination of whether to grant or refuse the request, in whole or in part, which determination shall be forthwith communicated to the applicant in writing.

(4) Any person in interest whose request for correction of records is refused may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the correction of such record. A hearing on such application shall be held at the earliest practical time. Unless the court

finds that the refusal of correction was proper, it shall order the custodian to make such correction and, upon a finding that the refusal was arbitrary or capricious, it may order the criminal justice agency for which the custodian was acting to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

24-72-308. Sealing of records. (1) Any person in interest may petition the district court of his residence or of the district in which the arrest and criminal records information pertaining to him is located for the sealing of all or any part of said record, except basic identification information.

(2) Upon the filing of a petition or entering of a court order, the court shall set a date for a hearing, which hearing may be closed at the court's discretion, and shall notify the district attorney, the arresting agency, and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of such record.

(3) (a) Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order such records, or any part thereof except basic identification information, to be sealed. If the court finds that neither sealing of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to such records.

(b) Any order entered under this subsection (3) shall specify those agencies to which such order shall apply.

(c) Every custodian of the arrest and criminal records information subject to the order, within thirty days after entry of the order unless it is stayed pending an appeal, shall advise the court and the petitioner in writing of compliance with the order.

(4) Upon the entry of an order to seal the records, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person in interest and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to such person.

(5) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person in interest who is the subject of such records or by the district attorney and only to those persons and for such purposes named in such petition.

(6) Employers, educational institutions, state and local

government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records information that has been sealed, include a reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

(7) All arrest and criminal records information existing prior to December 31, 1977, except basic identification information, is also subject to sealing in accordance with this part 3.

(8) Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records, if upon the petition of a person in interest who has received a pardon after a conviction, the court shall order the physical destruction of the arrest and criminal records information relating to that pardon.

24-72-309. Violation - penalty. Any person who wilfully and knowingly violates the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

SECTION 2. 24-72-202 (6), Colorado Revised Statutes 1973, is amended to read:

24-72-202. Definitions. (6) "Public records" means and includes all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds. IT DOES NOT INCLUDE CRIMINAL JUSTICE RECORDS WHICH ARE SUBJECT TO THE PROVISIONS OF PART 3 OF THIS ARTICLE.

SECTION 3. 24-32-412 (1) (c) and (3), Colorado Revised Statutes 1973, are amended, and the said 24-32-412 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-32-412. Functions of bureau. (1) (c) To establish and maintain fingerprint, CRIME, CRIMINAL, FUGITIVE, STOLEN PROPERTY, and other identification files and records; TO OPERATE THE STATEWIDE UNIFORM CRIME REPORTING PROGRAM; and to arrange for scientific laboratory services and facilities for assistance to law enforcement agencies, utilizing existing facilities and services wherever feasible;

(3) Any other provision of law to the contrary notwithstanding and except for title 19, C.R.S. 1973, on and after July 1, 1971, in accordance with a program to be established by the bureau, every law enforcement, correctional, and judicial entity, agency, or facility in this state shall furnish to the bureau ~~upon---its---request;~~ all arrest, identification, and FINAL CHARGE dispositional information ON PERSONS ARRESTED IN COLORADO FOR FEDERAL, STATE OR OUT-OF-STATE CRIMINAL OFFENSES, AND ON PERSONS RECEIVED FOR SERVICE OF ANY SENTENCE OF INCARCERATION; except that the provision of information by judicial entities, agencies, and facilities shall be under procedures to be established jointly by the state court administrator and the director of the Colorado bureau of investigation.

(5) To assist the bureau in its operation of the uniform crime reporting program, every law enforcement agency in this state shall furnish such information to the bureau concerning crimes, arrests, and stolen and recovered property as is necessary for uniform compilation of statewide reported crime, arrest, and recovered property statistics. The cost to the law enforcement agency of furnishing such information shall be reimbursed out of appropriations made therefor by the general assembly; except that the general assembly shall make no such reimbursement if said cost was incurred in a fiscal year during which the Colorado crime information center was funded exclusively by state or federal funds.

SECTION 4. Repeal. 24-72-204 (2) (a) (I), Colorado Revised Statutes 1973, is repealed.

SECTION 5. Effective date. This act shall take effect December 31, 1977.

SECTION 6. Safety clause. The general assembly hereby

§ 1–15. Application for copies of public records. Certified copies. Fees

Any person applying in writing shall receive, promptly upon request, a plain or certify copy of any public record. The fee for any copy provided in accordance with this section and sections 1–18a, 1–19 to 1–19b, inclusive, and 1–21 to 1–21k, inclusive, shall not exceed twenty-five cents per page. If any copy provided in accordance with said sections requires a printout or transcription, or if any person applies for a printout or transcription of a public record, the fee for such printout or transcription shall not exceed the cost thereof to the public agency. A public agency may require the pre-payment of any fee required or permitted under chapter 3 [1] and this act,[2] if such fee is estimated to be ten dollars or more. The sales tax provided in chapter 219 [3] shall not be imposed upon any transaction for which a fee is required or permissible under this section or section 1–21c. The public agency shall waive any fee provided for in this section when (1) the person requesting the records is an indigent individual, (2) the records located are determined by the public agency to be exempt from disclosure under subsection (b) of section 1–19, or (3) in its judgment, compliance with the applicant's request benefits the general welfare. Except as otherwise provided by law, the fee for any person who has the custody of any public records or files for certifying any copy of such records or files, or certifying to any fact appearing therefrom, shall be for the first page of each certificate, or copy and certificate, one dollar; and for each additional page, fifty cents. For the purpose of computing such fee, such copy and certificate shall be deemed to be one continuous instrument.

§ 1–18a. Definitions

As used in this chapter and public act 77–609, the following words and phrases shall have the following meanings, except where such terms are used in a context which clearly indicates the contrary:

(a) "Public agency" or "agency" means any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, and also includes any judicial office, official or body but only in respect to its or their administrative functions.

(b) "Meeting" means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multi-member public agency, and any communication by or to a quorum of a multi-member public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. "Meeting" shall not include: any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof. "Caucus" means a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision.

(c) "Person" means natural person, partnership, corporation, association or society.

(d) "Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

(e) "Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes (1) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (2) strategy and negotiations with respect to pending claims and litigation to which the public agency or a member thereof, because of his conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (3) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (4) discussion of the selection of a site or the lease, sale or purchase of real estate by a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would cause a likelihood of increased price until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (5) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1–19, as amended.

(1975, P.A. 75–342, § 1; 1977, P.A. 77–421: 1977, P.A. 77–609, § 1, eff. July 1, 1977.)

§ 1–19. Access to public records. Exempt records

(a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to inspect or copy such records at such reasonable time as may be determined by the custodian thereof. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of any political subdivision or the secretary of the state, as the case may be. Any certified record hereunder attested as a true copy by the clerk, chief or deputy or such other person designated or empowered by law to so act, of such agency shall be competent evidence in any court of this state of the facts contained therein. Each such agency shall make, keep and maintain a record of the proceedings of its meetings.

(b) Nothing in sections 1–15, 1–18a, 1–19 to 1–19b, inclusive, and 1–21 to 1–21k, inclusive, shall be construed to require disclosure of (1) preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure; (2) personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy; (3) records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known, (B) information to be used in a prospective law enforcement action if prejudicial to such action, (C) investigatory techniques not otherwise known to the general public, or (D) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes; (4) records pertaining to strategy and negotiations with respect to pending claims and litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled; (5) trade secrets, which for purposes of sections 1–15, 1–18a, 1–19 to 1–19b, inclusive, and 1–21 to 1–21k, inclusive, are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating or processing of articles or materials which are trade commodities obtained from a person and which are recognized by law as confidential, and commercial or financial information given in confidence, not required by law and obtained from the public; (6) test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations; (7) the contents of real estate appraisals, engineering or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned, provided the law of eminent domain shall not be affected by this provision; (8) statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualification for the license, certificate or permit applied for; (9) records, reports and statements of strategy or negotiations with respect to collective bargaining; (10) records, tax returns, reports and statements exempted by federal law or state statutes or communications privileged by the attorney-client relationship; (11) names or addresses of students enrolled in any public school or college without the consent of each student whose name or address is to be disclosed who is eighteen years of age or older and a parent or guardian of each such student who is younger than eighteen years of age.

(c) The records referred to in subsection (b) shall not be deemed public records for the purposes of sections 1–15, 1–18a, 1–19 to 1–19b, inclusive, and 1–21 to 1–21k, inclusive, provided disclosure pursuant to the provisions of said sections shall be required of all records of investigation conducted with respect to any tenement house, lodging house or boarding house as defined in chapter 352, or any nursing home, home for the aged or rest home, as defined in chapter 333, by any municipal building department or housing code inspection department, any local or district health department, or any other department charged with the enforcement of ordinances or laws regulating the erection, construction, alteration, maintenance, sanitation, ventilation or occupancy of such buildings.

(1971, P.A. 193; 1975, P.A. 75-342, § 2, eff. Oct. 1, 1975; 1976, P.A. 76-294; 1977, P.A. 77-609, § 2, eff. July 1, 1977.)

§ 1–19a. Access to computer-stored records

Any public agency which maintains its records in a computer storage system shall provide a printout of any data properly identified.
(1975, P.A. 75–342, § 4.)

§ 1–21j. [Freedom of information commission. Appointment. Duties. Training sessions. Vacancy]

(a) There shall be a freedom of information commission consisting of five members appointed by the governor, with the advice and consent of either house of the general assembly, who shall serve for terms of four years from the July first of the year of their appointment, except that of the members appointed prior to and serving on July 1, 1977, one shall serve for a period of six years from July 1, 1975, one shall serve for a period of four years from July 1, 1975, and one shall serve for a period of six years from July 1, 1977. Of the two new members first appointed after July 1, 1977, one shall serve from the date of such appointment until June 30, 1980, and one shall serve from the date of such appointment until June 30, 1982. No more than three members shall be members of the same political party. Said commission shall be an autonomous body within the office of the secretary of the state for fiscal and budgetary purposes only.

(b) Each member shall receive twenty-five dollars per day for each day such member is present at a commission hearing and an allowance for transportation, a sum not to exceed twelve cents per mile, for each day such member attends a commission hearing.

(c) The governor shall select one of its members as a chairman. The commission shall maintain a permanent office at Hartford in such suitable space as the public works commissioner provides; the secretary of the state shall provide such secretarial assistance as is needed. All papers required to be filed with the commission shall be delivered to such office.

(d) The commission shall, subject to the provisions of sections 1–15, 1–18a, 1–19 to 1–19b, inclusive, and 1–21 to 1–21k, inclusive, promptly review the alleged violation of said sections and issue an order pertaining to the same. Said commission shall have the power to investigate all alleged violations of said sections and may for the purpose of investigating any violation hold a hearing, administer oaths, examine witnesses, receive oral and documentary evidence, have the power to subpoena witnesses under procedural rules adopted by the commission to compel attendance and to require the production for examination of any books and papers which the commission deems relevant in any matter under investigation or in question. In case of a refusal to comply with any such subpoena or to testify with respect to any matter upon which that person may be lawfully interrogated, the court of common pleas for the county of Hartford, on application of the commission, may issue an order requiring such person to comply with such subpoena and to testify; failure to obey any such order of the court may be punished by the court as a contempt thereof.

(e) The freedom of information commission shall conduct training sessions, at least annually, for members of public agencies for the purpose of educating such members as to the requirements of sections 1–7 to 1–21k, inclusive.

(f) When the general assembly is in session, the governor shall have the authority to fill any vacancy on the commission, with the advice and consent of either house of the general assembly. When the general assembly is not in session any vacancy shall be filled pursuant to the provisions of section 4–19. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission and three members of the commission shall constitute a quorum.
(1975, P.A. 75–342, § 15, eff. July 1, 1975; 1977, P.A. 77–609, § 7, eff. July 1, 1977.)

§ 1-21k. Penalties

(a) Any person who wilfully, knowingly and with intent to do so, destroys, mutilates or otherwise disposes of any public record without the approval required under section 1-18 or unless pursuant to chapter 47, or who alters any public record, shall be guilty of a class A misdemeanor and each occurrence of failure to comply with such order shall constitute a separate offense.

(b) Any member of any public agency who fails to comply with an order of the freedom of information commission shall be guilty of a class B misdemeanor and each occurrence of failure to comply with such order shall constitute a separate offense.

(1975, P.A. 75-342, § 16.)

PERSONAL DATA [NEW]

[§ 4-190. (P.A. 76-421, § 1) Definitions]

As used in sections 4-190 to 4-197:

(a) "Agency" means each state board, commission, department or officer, other than the legislature, courts, governor, lieutenant governor, attorney general or town or regional boards of education, which maintains a personal data system.

(b) "Attorney" means an attorney at law empowered by a person to assert the confidentiality of or right of access to personal data under sections 4-190 to 4-197.

(c) "Authorized representative" means a parent, or a guardian or conservator, other than an attorney, appointed to act on behalf of a person and empowered by such person to assert the confidentiality of or right of access to personal data under sections 4-190 to 4-197.

(d) "Automated personal data system" means a personal data system in which data is stored, in whole or part, in a computer or in computer accessible files.

(e) "Computer accessible files" means files which contain personal data recorded on magnetic tape, magnetic film, magnetic disks, magnetic drums, punch cards or optically scanable paper or film.

(f) "Maintain" means collect, maintain, use or disseminate.

(g) "Manual personal data system" means a personal data system other than an automated personal data system.

(h) "Person" means an individual of any age concerning whom personal data is maintained in a personal data system, or a person's attorney or authorized representative.

(i) "Personal data" means any information about a person's education, finances, medical or emotional condition or history, criminal history, employment or business history, family or personal relationships, reputation or character which because of name, identifying number, mark or description can be readily associated with a particular person. "Personal data" shall not be construed to make available to a person any record described in subdivision (2) of subsection (b) of section 1-19.

(j) "Personal data system" means a collection of records containing personal data.

(1976, P.A. 76-421, § 1, eff. July 1, 1977.)

1976, P.A. 76-421, § 9, provided. "This act shall take effect July 1, 1977."

Library References
Words and Phrases (Perm. Ed.)

§ 4-191 MANAGEMENT OF STATE AGENCIES

[§ 4-191. (P.A. 76-421, § 2) Disclosure or transmittal of personal data prohibited; exception]

No agency or any of its employees shall disclose or transmit any personal data to any other individual, corporation or municipal, state or federal agency without the consent of the person, except as provided in section 4-192.
(1976, P.A. 76-421, § 2, eff. July 1, 1977.)

[§ 4-192. (P.A. 76-421, § 3) Disclosure or transmittal of personal data without consent; conditions]

Consent of the person shall not be required for the disclosure or transmission of personal data when:

(a) The disclosure or transmission is to an employee of the agency who has a need for the personal data in the performance of his duties;

(b) The agency determines that there is substantial risk of imminent physical injury by the person to himself or to others, and that disclosure or transmission of the personal data is necessary to reduce that risk;

(c) Disclosure or transmission without consent is otherwise authorized by statute;

(d) Such transmission or disclosure is made pursuant to a subpoena, order of court or other judicial process.
(1976, P.A. 76-421, § 3, eff. July 1, 1977.)

[§ 4-193. (P.A. 76-421, § 4) Duties of agencies]

Each agency shall:

(a) Inform each of its employees who operates or maintains a personal data system or who has access to personal data, of the provisions of sections 4-190 to 4-197, of the agency's regulations promulgated pursuant to section 4-196, and of any other state or federal statute or regulation concerning maintenance or disclosure of personal data kept by the agency;

(b) Take reasonable precautions to protect personal data from dangers of fire, theft, flood, natural disaster, or other physical threats;

(c) Keep a complete record, concerning each person, of every individual, agency or organization who has obtained access to or to whom disclosure has been made of personal data pursuant to subsection (b) and (c) of section 4-192, and the reason for each such disclosure or access;

(d) Make available to a person, upon request, the record kept under subsection (c) of this section;

(e) Maintain only that information about a person which is relevant and necessary to accomplish the lawful purposes of the agency;

(f) Inform an individual in writing, upon request, whether the agency maintains personal data concerning him;

(g) Except as otherwise provided in section 4-194, disclose to a person, upon request, all personal data concerning him which is maintained by the agency. If disclosure of personal data is made under this subsection, the agency shall not disclose any personal data concerning persons other than the requesting person;

(h) Establish procedures which:

(1) Allow a person to contest the accuracy, completeness or relevancy of his personal data;

(2) Allow personal data to be corrected upon request of a person when the agency concurs in the proposed correction;

(3) Allow a person who believes that the agency maintains inaccurate or incomplete personal data concerning him to add a statement to the record setting forth what he believes to be an accurate or complete version of that personal data. Such a statement shall become a permanent part of the

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agency's personal data system, and shall be disclosed to any individual, agency or organization to which the disputed personal data is disclosed.
(1976, P.A. 76-421, § 4, eff. July 1, 1977.)

[§ 4-194. (P.A. 76-421, § 5) Refusal to disclose detrimental data; judicial relief]

If an agency determines that disclosure to a person of medical, psychiatric or psychological data concerning him would be detrimental to that person, or that nondisclosure to a person of personal data concerning him is otherwise permitted or required by law, the agency may refuse to disclose that personal data, and shall refuse disclosure where required by law. In either case, the agency shall advise that person of his right to seek judicial relief.
(1976, P.A. 76-421, § 5, eff. July 1, 1977.)

[§ 4-195. (P.A. 76-421, § 6) Petition for order to disclose personal data by aggrieved person]

If disclosure of personal data is refused by an agency under section 4-194, any person aggrieved thereby may, within thirty days of such refusal, petition the court of common pleas for the county or judicial district in which he resides for an order requiring the agency to disclose the personal data. Such a proceeding shall be privileged with respect to assignment for trial. The court, after hearing and an in camera review of the personal data in question, shall issue the order requested unless it determines that such disclosure would be detrimental to the person or is otherwise prohibited by law.
(1976, P.A. 76-421, § 6, eff. July 1, 1977.)

[§ 4-196. (P.A. 76-421, § 7) Regulations]

Each agency shall, before January 1, 1978, adopt regulations pursuant to chapter 54 which describe:

(1) The general nature and purpose of the agency's personal data systems;

(2) The categories of personal and other data kept in the agency's personal data systems;

(3) The agency's procedures regarding the maintenance of personal data;

(4) The uses to be made of the personal data maintained by the agency.
(1976, P.A. 76-421, § 7, eff. July 1, 1977.)

[§ 4-197. (P.A. 76-421, § 8) Violation of provisions; action by aggrieved person]

Any agency which violates any provision of sections 4-190 to 4-197 shall be subject to an action by any aggrieved person for injunction, declaratory judgment, mandamus or a civil action for damages. Such action may be brought in the superior court for Hartford county, or for the county or judicial district in which the person resides. Actions for injunction, declaratory judgment or mandamus under this section may be prosecuted by any aggrieved person or by the attorney general in the name of the state upon his own complaint or upon the complaint of any individual. Any aggrieved person who prevails in an action under this section shall be entitled to recover court costs and reasonable attorney's fees. An action under this section shall be privileged with respect to assignment for trial.
(1976, P.A. 76-421, § 8, eff. July 1, 1977.)

§ 29–14. Duties of bureau

Said bureau shall, on the receipt of any such identification card, immediately cause the files to be examined and shall promptly return to the police department or peace officer submitting such identification card a true transcript of the record of previous crimes committed by the person described on each such identification card, and said bureau shall assist police and prosecuting officials in the preparation and distribution of circulars relative to fugitives when so requested. When an arrest is made by an officer of a police department or other peace officer who is not equipped with necessary paraphernalia or skilled in the art of taking fingerprints and proper descriptions of criminals, he may call on the state police bureau of identification or on the nearest state police station for assistance and any officer or officers so called shall render such assistance immediately.
(1976, P.A. 76–333, § 4.)

1976 Amendment
1976, P.A. 76–333, § 4, changed the name of state bureau of identification to state police bureau of identification.

§ 29–15. Return of fingerprints, pictures and descriptions

(a) On or after October 1, 1974, when any person, having no record of prior criminal conviction, whose fingerprints and pictures are so filed has been found not guilty of the offense charged, or has had such charge dismissed or nolled, his fingerprints, pictures and description and other identification data and all copies and duplicates thereof, shall, be returned to him not later than sixty days after the finding of not guilty or after such dismissal or in the case of a nolle within sixty days after thirteen months of such nolle.

(b) Any person having no record of prior criminal conviction whose fingerprints and pictures are so filed, who has been found not guilty of the offense charged or has had such charge dismissed or nolled prior to October 1, 1974, may, upon application to the clerk of the court, have his fingerprints, pictures and description and other identification data and all copies and duplicates thereof, returned to him not later than sixty days after the filing of such application provided in the case of a nolle, such nolle shall have occurred thirteen months prior to filing of such application.
(1975, P.A. 75–567, § 72, eff. June 30, 1975.)

1975 Amendment
1975, P.A. 75–567, § 72, inserted, near the beginning of subsec. (a), "when" following "October 1, 1974,".

§ 29–16. Use of information

Information contained in the files of the state police bureau of identification relative to the commission of crime by any person shall be considered privileged and shall not be disclosed for any personal purpose or in any civil court proceedings except upon a written order of the judge of an established court wherein such civil proceedings are had. All information contained in the files of the state police bureau of identification relative to criminal records and personal history of persons convicted of crime shall be available at all times to all peace officers engaged in the detection of crime and to all prosecuting officials and probation officers for the purpose of furthering the ends of public justice.
(1976, P.A. 76–333, § 5.)

§ 29–17. Penalty

Any person who neglects or refuses to comply with the requirements of sections 29–11 to 29–16, inclusive, shall be fined not more than one hundred dollars.
(1949 Rev., § 3659.)

§ 54-90. [Erasure of arrest and court records after not guilty findings, nolles, continuances and pardons. Sealing of records. Motion for disclosure]

Text of section effective January 2, 1977 (see note under § 51-146.)

(a) Whenever in any criminal case the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of the state's or prosecuting attorney pertaining to such charge shall be immediately and automatically erased.

(b) Whenever in any criminal case prior to October 1, 1969, the accused, by a final judgment, was found not guilty of the charge or the charge was dismissed, the arrested person or any one of his heirs may file a petition for erasure with the court granting such not guilty judgment or dismissal, or, where the matter had been before a municipal court, a trial justice or the circuit court, with the office of the chief judge of the court of common pleas and thereupon all police and court records and records of the state's attorney, prosecuting attorney or prosecuting grand juror pertaining to such charge shall be immediately and automatically erased.

(c) Whenever any charge in a criminal case has been nolled in the superior court, or in the court of common pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased, provided in cases of nolles entered in the superior court, court of common pleas, circuit court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records in the office of the chief judge of the court of common pleas or any person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased; provided nothing in this section shall prohibit the arrested person or any one of his heirs from filing a petition to the appropriate court or to the office of the chief judge of the court of common pleas to have such records physically erased, in which case such records shall be erased. Whenever any charge in a criminal case has been continued in the superior court, or the circuit court or court of common pleas, and a period of thirteen months has elapsed since the granting of such continuance during which period there has been no prosecution or other disposition of the matter, the charge shall be construed to have been nolled as of the date of termination of such thirteen-month period and such erasure may thereafter be effected or a petition filed therefor, as the case may be, as provided in this subsection for nolled cases.

(d) Whenever prior to October 1, 1974, any person who has been convicted of an offense in any court of this state has received an absolute pardon for such offense, such person or any one of his heirs may, at any time subsequent to such pardon, file a petition, with the court in which such conviction was effected, or with the court having custody of the records of such conviction or with the office of the chief judge of the court of common pleas if such conviction was in the court of common pleas, circuit court, municipal court or by a trial justice court, for an order of erasure in the same manner as is provided in subsection (b) of this section, and such court shall order all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased. Whenever such absolute pardon was received on or after October 1, 1974, such records shall be automatically erased.

(e) The clerk of the superior court or the office of the chief judge of the court of common pleas, as the case may be, or any law enforcement agency having information contained in such erased records shall not disclose to anyone information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records in the office of the chief judge, shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall seal all court records and records of the state's or prosecuting attorney and place them in locked files maintained for this purpose; or upon the request of the accused cause the actual physical destruction of such records. No fee shall be charged in any court with respect to any petition under this section. Any person who shall have been the subject of such an erasure shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.

(f) Upon motion properly brought, the court or a judge thereof, if such court is not in session, may order disclosure of such records to the accused if the court or judge thereof, as the case may be, finds that nondisclosure

may be harmful to the accused in a civil action or may order disclosure to a defendant or the accused in an action for false arrest arising out of the proceedings so erased.

(g) The provisions of this section shall not apply to any police or court records or the records of any state's attorney or prosecuting attorney with respect to any count of any information which was nolled if the accused was convicted upon one or more counts of the same information and if all such counts arose out of the same transaction and had the same factual basis. (1963, P.A. 482; 1963, P.A. 642, § 72; 1967, P.A. 181; 1967, P.A. 663; 1969, P.A. 229, § 1; 1971, P.A. 635, § 1, eff. June 28, 1971; 1972, P.A. 20, § 2, eff. April 5, 1972; 1973, P.A. 73-276, § 1, eff. May 16, 1973; 1974, P.A. 74-52, § 1, eff. April 19, 1974; 1974, P.A. 74-163, §§ 1 to 3; 1974, P.A. 74-183, § 152, eff. Dec. 31, 1974; 1975, P.A. 75-541, §§ 1, 2; 1976, P.A. 76-345; 1976, P.A. 76-388, § 4, eff. Jan. 2, 1977.)

§ 3904. Destruction of indicia of arrest.

(a) Whenever a person with no prior criminal record is arrested but is not convicted of any crime nor adjudged a delinquent as a result of the arrest, the Superior Court in the county wherein such person resides, or if such person does not reside in this State, the Superior Court of New Castle County, upon petition of such person, may order that all indicia of arrest, including, without limitation, any record entries, photographs or fingerprints, be destroyed. Upon the issuance of any such order of the Superior Court it shall not be necessary for such person to report or acknowledge that he has ever been arrested for such crime.

(b) Any petition filed pursuant to subsection (a) of this section shall be served upon the Attorney General, and no action shall be taken by the Superior Court for 10 days after the date of such service. (11 Del. C. 1953, § 3913; 57 Del. Laws, c. 588.)

§ 4322. Protection of records.

(a) The presentence report (other than a presentence report prepared for the Superior Court or the Court of Common Pleas), the preparole report, the supervision history, and all other case records obtained in the discharge of official duty by any member or employee of the Department shall be privileged and shall not be disclosed directly or indirectly to anyone other than the courts as defined in § 4302 of this title, and the Family Court, the Board of Parole, the Board of Pardons, the Attorney General and the Deputies Attorney General, or others entitled by this chapter to receive such information; except that the court may, in its discretion, permit the inspection of the report or parts thereof by the offender or his attorney or other persons who in the judgment of the court have a proper interest therein, whenever the best interest of the State or welfare of a particular defendant or person makes such action desirable or helpful. No person committed to the Department shall have access to any of said records. The presentence reports prepared for the Superior Court and the Court of Common Pleas shall be under the control of those courts respectively.

(b) The Commissioner or his designees may receive and use, for the purpose of aiding in the treatment of rehabilitation of offenders, the preparole report, the supervision history, and other Department of Correction case records, provided that such information or reports remain privileged for any other purpose.

This subsection shall not apply to the presentence reports of the Superior Court and the Court of Common Pleas which reports shall remain under the control of such courts. (11 Del. C. 1953, § 4322; 54 Del. Laws, c. 349, § 7; 56 Del. Laws, c. 149.)

CHAPTER 85. STATE BUREAU OF IDENTIFICATION

Cross reference. — As to transfer of powers, duties and functions of the State Bureau of Identification to the Division of State Police of the Department of Public Safety, see § 8206 of Title 29.

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§ 8501. Supervision and location; appointment of Supervisor.

(a) The State Bureau of Identification, hereinafter in this chapter referred to as "Bureau," is continued within the Division of State Police.

(b) The Bureau shall be under the supervision and control of the Superintendent of State Police. It shall be equipped and maintained by the State Police, and shall be located in the main offices of the State Police.

(c) The Superintendent of State Police shall appoint, subject to the approval of the Department of Public Safety, a Supervisor of the Bureau. The Supervisor shall be a regularly appointed member of the State Police, who shall be trained and experienced in the classification and filing of fingerprints, and he and all other employees of the Bureau shall be subject to the same rules and regulations governing the State Police. (42 Del. Laws, c. 181, § 1; 11 Del. C. 1953, § 8501; 57 Del. Laws, c. 670, §§ 4A, 4B.)

§ 8502. Personnel.

The Bureau personnel shall consist of regular appointed members of the State Police, and such civilian personnel as may be deemed necessary to carry out this

chapter. The civilian personnel so appointed shall each be experienced in the work to be performed by them. (42 Del. Laws, c. 181, § 2; 11 Del. C. 1953, § 8502.)

§ 8503. Information to be supplied by peace officers.

Every sheriff, constable, chief police officer, officer in charge, members of the State Police and other law enforcement agencies and officers of the State and of any local governmental unit shall transmit to the Bureau, so far as available, as provided in § 8507 of this title:

(1) Within 48 hours after the arrest of any person, the names, fingerprints and such other data as the Supervisor may from time to time prescribe of all persons arrested for, or suspected of:

a. An indictable offense, or such nonindictable offense as is, or may hereafter be, included in the compilations of the Federal Bureau of Investigation of the United States Department of Justice;

b. Being a fugitive from justice;

c. Being a vagrant or transient;

d. Being a suspicious person;

e. Being concerned in gambling or gambling devices;

f. Being a known habitual offender or criminal;

g. Being habitual users of narcotics or other habit-forming drugs;

h. Being the operator of a motor vehicle while under the influence of intoxicating liquor or drugs or leaving the scene of accident without identifying himself;

i. Being in possession of stolen goods or of goods believed to have been stolen; and

j. Being in possession of illegal or illegally carried weapons or in possession of burglar's tools, tools for defacing or altering of the numbers on automobiles, automobile parts, automobile engines or automobile engine parts; or other articles used in the manufacture or alteration of counterfeit money or bank notes; or illegally in possession of high power explosives, infernal machines, bombs or other contrivances reasonably believed by the arresting person to be intended to be used for unlawful purposes;

(2) The fingerprints, photographs and other data prescribed by the Supervisor concerning unidentified dead persons;

(3) The fingerprints, photographs and other data prescribed by the Supervisor of all persons making application for a permit to buy or possess illegal weapons or firearms or to carry concealed a deadly weapon;

(4) A record of the indictable offenses and of such nonindictable offenses as are committed within the jurisdiction of the reporting officer, including

a statement of the facts of the offense and a description of the offender, so far as known, the offender's method of operation, the official action taken and such other information as the Supervisor may require.

(5) Copies of such reports as are required by law to be made, and as shall be prescribed by the Supervisor, to be made by pawnshops, secondhand dealers and dealers in weapons. (42 Del. Laws, c. 181, § 3; 11 Del. C. 1953, § 8503.)

Arrestee's rights not violated by taking his photograph or fingerprints. — No rights of an arrestee, whether concerned with self-incrimination, privacy or otherwise, are violated by this section, inasmuch as the taking of a photograph or the making of a fingerprint merely create images of a suspect's physical characteristics. Walker v. Lamb, 254 A.2d 265 (Del. Ch.), aff'd, 259 A.2d 663 (Del. Sup. Ct. 1969).

§ 8504. Information to be supplied by court officials.

Every clerk of a court having original or appellate jurisdiction over indictable offenses, or over such nonindictable offenses as are herein mentioned, or, if there be no clerk, every judge or justice of such court, shall transmit promptly to the Bureau, as provided in § 8507 of this title, such statistics and information as the Supervisor shall prescribe regarding indictments and information filed in such court and the disposition made of them, pleas, convictions, committals, acquittals, probations and paroles granted or denied, and any other dispositions of criminal proceedings made in such court. (42 Del. Laws, c. 181, § 4; 11 Del. C. 1953, § 8504.)

§ 8505. Information to be supplied by heads of institutions.

Every person in responsible charge of reformatories, industrial schools or insane institutions to which there are committed persons convicted of crime or juvenile delinquency or declared to be criminally insane, shall transmit to the Bureau, the names, fingerprints, photographs and such other data prescribed by the Supervisor of all persons so committed, as provided in § 8507 of this title. (42 Del. Laws, c. 181, § 5; 11 Del. C. 1953, § 8505.)

§ 8506. Information to be supplied by wardens, jailers or keepers.

Every warden, jailer or keeper of workhouses, jails, penitentiaries or other penal institutions, and every probation officer shall within 48 hours, transmit to the Bureau, as provided in § 8507 of this title:

(1) The names, fingerprints, photographs and other data prescribed by the Supervisor, concerning all persons who are received or committed to such penal institution, or who are placed on parole or probation for any offense;

(2) The officers and officials described in this section and § 8505 of this title shall forward to the Bureau, the names and photographs of all prisoners who are to be released or discharged from such institutions, after having been confined in such institutions for a period of 3 years or more; such photographs will be taken immediately before release of such persons, and he or she shall be attired in civilian clothes;

(3) Full reports of all transfers to or from such institutions, paroles granted or revoked, discharges, from such institutions or from parole, commutation of sentence and pardons of all persons described in paragraphs (1) and (2) of this section;

(4) All photographs taken of persons or prisoners described in this section and §§ 8503 and 8505 of this title shall be of a recent date, taken while such persons or prisoners are attired in civilian clothes. (42 Del. Laws, c. 181, § 6; 11 Del. C. 1953, § 8506.)

§ 8507. Required information.

The officers and officials described in this chapter shall furnish to the Bureau the information and reports specified at or within such time or period as the Supervisor shall designate, on forms prescribed by the Supervisor, and shall forward without delay 2 copies or such number of copies as the Supervisor may require. (42 Del. Laws, c. 181, § 7; 11 Del. C. 1953, § 8507.)

§ 8508. Access to institutions and public records.

Any employee of the Bureau, upon written authorization by the Supervisor, may enter any penal institution or institution for the insane, to take or cause to be taken fingerprints or photographs or to make investigation relative to any person confined therein, for the purpose of obtaining information which will lead to the identification of criminals; and every person who has charge or custody of public records or documents from which it may reasonably be supposed that information described in this chapter can be obtained, shall grant access thereto to any employee of the Bureau upon written authorization by the Supervisor, or shall produce such records or documents for the inspection and examination of such employee. (42 Del. Laws, c. 181, § 8; 11 Del. C. 1953, § 8508.)

§ 8509. Filing information.

The Bureau shall file all information received by it and shall make a systematic record and index thereof, to the end of providing a method of convenient reference and consultation. No information identifying a person received by the Bureau may be destroyed by it until 10 years after the person identified is known or reasonably believed to be dead. (42 Del. Laws, c. 181, § 9; 11 Del. C. 1953, § 8509.)

§ 8510. Information voluntarily supplied by residents.

Whenever a resident of this State appears before any of the officers mentioned in § 8503 of this title, and requests an impression of his fingerprints, such mentioned officer shall comply with the request, and make at least 2 copies of the impressions on forms supplied by the Bureau. One copy shall be forwarded to the Federal Bureau of Investigation at Washington, D. C., and 1 copy shall be forwarded promptly to the Bureau as provided in § 8507 of this title together with any personal identification data obtainable. The Bureau shall accept and file such fingerprints and personal identification data submitted voluntarily by such resident in a separate filing system, for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory or change of appearance. (42 Del. Laws, c. 181, § 10; 11 Del. C. 1953, § 8510.)

§ 8511. Furnishing information to those in authority.

Upon application, the Bureau shall furnish a copy of all information available pertaining to identification and history of any person or persons of whom the Bureau has a record, or any other necessary information, to:

(1) Any sheriff, constable, chief police officer of the State or of any local government unit, or to any officer of similar rank and description of any state, or of the United States, or of any foreign country; or

(2) The prosecuting attorney in any court of this State in which such person is being tried for any offense; or

(3) The judge in any court of this State in which such person is so being tried. (42 Del. Laws, c. 181, § 11; 11 Del. C. 1953, § 8511.)

(4) Any person may request and receive a copy of his or her own Delaware criminal history record provided that such person (a) submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify one's self as the person whose record this individual seeks, and (b) pays a fee of $5 per request payable to the Delaware State Police. (42 Del. Laws, c. 181, § 11; 11 Del. C. 1953, § 8511; 59 Del. Laws, c. 551.)

§ 8512. Furnishing information of injured or deceased persons.

If any officer or official described in § 8511 of this title, transmits to the Bureau the identification data of any unidentified deceased or injured person or any person suffering from loss of memory, the Bureau shall furnish to such officer or official any information available pertaining to the identification of such person. (42 Del. Laws, c. 181, § 12; 11 Del. C. 1953, § 8512.)

§ 8513. Furnishing information without application.

Although no application for information has been made to the Bureau as provided in § 8511 of this title, the Bureau may transmit such information as the Supervisor, in his discretion, designates to such persons as are authorized by § 8511 of this title to make application for it and as are designated by the Supervisor. (42 Del. Laws, c. 181, § 13; 11 Del. C. 1953, § 8513.)

§ 8514. Local assistance.

(a) At the request of any officer or official described in §§ 8503, 8505 and 8506 of this title, the Superintendent of State Police may direct the Supervisor to assist such officer:

(1) In the establishment of local identification and record system;

(2) In investigating the circumstances of any crime and in the identification, apprehension, and conviction of the perpetrator or perpetrators thereof, and for this purpose may detail such employee or employees of the Bureau, for such length of time as the Supervisor deems fit; and

(3) Without such request the Supervisor shall, at the direction of the Governor, detail such employee or employees, for such time as the Governor deems fit, to investigate any crime within this State, for the purpose of identifying, apprehending and convicting the perpetrator or perpetrators thereof.

(b) The Governor may, in his discretion, delegate to the Secretary of Public Safety any of the powers, duties or functions set forth in this section. (42 Del. Laws, c. 181, § 14; 11 Del. C. 1953, § 8514; 57 Del. Laws, c. 670, § 4C.)

§ 8515. Scientific crime detection laboratory.

To the end that the Bureau may be able to furnish the assistance and aid specified in § 8514 of this title, the Superintendent of the State Police may direct the Supervisor to organize in the Bureau and maintain therein scientific crime detection laboratory facilities. (42 Del. Laws, c. 181, § 15; 11 Del. C. 1953, § 8515.)

§ 8516. Certified copies of records.

Any copy of a record, picture, photograph, fingerprint or other paper or document in the files of the Bureau certified by the Supervisor to be a true copy of the original shall be admissible in evidence in any court of this State in the same manner as the original might be. (42 Del. Laws, c. 181, § 16; 11 Del. C. 1953, § 8516.)

§ 8517. Annual report.

The Supervisor shall submit to the Superintendent of State Police an annual yearly report of the conduct of his office. This report shall present summary statistics of the information collected by the Bureau. (42 Del. Laws, c. 181, § 17; 11 Del. C. 1953, § 8517.)

§ 8518. Access to files.

Only employees of the Bureau and persons specifically authorized by the Supervisor shall have access to the files or records of the Bureau. No such file or record or information shall be disclosed by any employee of the Bureau except to officials as in this chapter provided and except as may be deemed necessary by the Supervisor in the apprehension or trial of persons accused of offenses or in the identification of persons or of property. (42 Del. Laws, c. 181, § 18; 11 Del. C. 1953, § 8518.)

§ 8519. Authority to take fingerprints, photographs and other data.

To the end that the officers and officials described in §§ 8503—8506 and 8510 of this title may be enabled to transmit the reports required of them, such officers and officials shall have the authority and duty to take, or cause to be taken, fingerprints, photographs and other data of persons described in such section. A like authority shall be had by employees of the Bureau who are authorized to enter any institution under § 8508 of this title, as to persons confined in such institutions. (42 Del. Laws, c. 181, § 19; 11 Del. C. 1953, § 8519.)

§ 8520. Failure to make required reports; penalty.

Whoever neglects, or refuses, to make any report lawfully required of him under this chapter, or to do or perform any other act so required to be done or performed by him or hinders or prevents another from doing an act so required to be done by such person, shall be fined not more than $50 or imprisoned not more than 60 days, or both. Such neglect or refusal shall constitute malfeasance in office and subject such officer or official to removal from office. (42 Del. Laws, c. 181, § 20; 11 Del. C. 1953, § 8520.)

§ 8521. Misconduct; penalty.

Whoever wilfully gives any false information or wilfully withholds information in any report lawfully required of him under this chapter or removes, destroys, alters or mutilates any file or record of the Bureau, shall be fined not less than $50 nor more than $100, or imprisoned not more than 6 months, or both. Such act shall constitute malfeasance in office and subject such officer or official to removal from office. (42 Del. Laws, c. 181, § 21; 11 Del. C. 1953, § 8521.)

§ 8522. Construction of chapter.

This chapter shall be liberally construed, to the end that offenders may be promptly and certainly identified, apprehended and prosecuted. (42 Del. Laws, c. 181, § 22; 11 Del. C. 1953, § 8522.)

CHAPTER 85. STATE BUREAU OF IDENTIFICATION

Cross reference. — As to transfer of powers, duties and functions of the State Bureau of Identification to the Division of State Police of the Department of Public Safety, see § 8206 of Title 29.

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§ 8501. Supervision and location; appointment of Supervisor.

(a) The State Bureau of Identification, hereinafter in this chapter referred to as "Bureau," is continued within the Division of State Police.

(b) The Bureau shall be under the supervision and control of the Superintendent of State Police. It shall be equipped and maintained by the State Police, and shall be located in the main offices of the State Police.

(c) The Superintendent of State Police shall appoint, subject to the approval of the Department of Public Safety, a Supervisor of the Bureau. The Supervisor shall be a regularly appointed member of the State Police, who shall be trained and experienced in the classification and filing of fingerprints, and he and all other employees of the Bureau shall be subject to the same rules and regulations governing the State Police. (42 Del. Laws, c. 181, § 1; 11 Del. C. 1953, § 8501; 57 Del. Laws, c. 670, §§ 4A, 4B.)

§ 8502. Personnel.

The Bureau personnel shall consist of regular appointed members of the State Police, and such civilian personnel as may be deemed necessary to carry out this

CHAPTER 100. FREEDOM OF INFORMATION ACT

§ 10001. Declaration of policy.

It is vital in a democratic society that public business be performed in an open and public manner so that the citizens shall be advised of the performance of public officials and of the decisions that are made by such officials in formulating and executing public policy. Toward this end, this chapter is adopted, and shall be construed. (60 Del. Laws, c. 641, § 1.)

§ 10002. Definitions.

(a) "Public body" means any regulatory, administrative, advisory, executive or legislative body of the State or any political subdivision of the State including, but not limited to, any board, bureau, commission, department, agency, committee, counsel, legislative committee, association or any other entity established by an act of the General Assembly of the State, which (1) is supported in whole or in part by public funds; (2) expends or disburses public funds; or (3) is specifically charged by any other public body to advise or make recommendations.

(b) "Public business" means any matter over which the public body has supervision, control, jurisdiction or advisory power.

(c) "Public funds" are those funds derived from the State or any political subdivision of the State, but not including grants-in-aid.

(d) "Public record" is written or recorded information made or received by a public body relating to public business. For purposes of this chapter, the following records shall not be deemed public:

(1) Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy;

(2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature;

(3) Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue;

(4) Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy. Any person may, upon proof of identity, obtain a copy of his personal criminal record. All other criminal records and files are closed to public scrutiny. Agencies holding such criminal records may delete any information, before release, which would disclose the names of witnesses, intelligence personnel and aids or any other information of a privileged and confidential nature;

(5) Intelligence files compiled for law-enforcement purposes, the disclosure of which could constitute an endangerment to the local, state or national welfare and security;

(6) Any records specifically exempted from public disclosure by statute or common law;

(7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(8) Any records involving labor negotiations or collective bargaining;

(9) Any records pertaining to pending or potential litigation which are not records of any court; or

(10) Any record of discussions allowed by § 10004(b) of this title to be held in executive session.

(e) "Meeting" means the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business.

(f) "Agenda" shall include but is not limited to a general statement of the major issues expected to be discussed at a public meeting.

(g) "Public body," "public record" and "meeting" shall not include activities of the Farmers Bank of the State of Delaware or the University of Delaware, except that the Board of Trustees of the University shall be a "public body," and University documents relating to the expenditure of public funds shall be "public records," and each meeting of the full Board of Trustees shall be a "meeting." (60 Del. Laws, c. 641, § 1.)

§ 10003. Examination and copying of public records.

(a) All public records shall be open to inspection and copying by any citizen of the State during regular business hours by the custodian of the records for the appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen. If the record is in active use or in storage and, therefore, not available at the time a citizen requests access, the custodian shall so inform the citizen and make an appointment for said citizen to examine such records as expediently as they may be made available. Any reasonable expense involved in the copying of such records shall be levied as a charge on the citizen requesting such copy.

(b) It shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. (60 Del. Laws, c. 641, § 1.)

§ 10004. Open meetings.

(a) Every meeting of all public bodies shall be open to the public except those closed pursuant to subsections (b), (c), (d) and (g) of this section.

(b) A public body at any meeting may call for an executive session closed to the public pursuant to subsection (c) of this section for any of the following purposes:

(1) Discussion of individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open;

(2) Preliminary discussions on site acquisitions for any publicly funded capital improvements;

(3) Activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension;

(4) Strategy sessions with respect to collective bargaining, pending or potential litigation, when an open meeting would have effect on the bargaining or litigation position of the public body;

(5) Discussions which would disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(6) Discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents;

(7) The hearing of student disciplinary cases unless the student requests a public hearing;

(8) The hearing of employee disciplinary or dismissal cases unless the employee requests a public hearing;

(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed;

(10) Training and orientation sessions conducted to assist members of the public body in the fulfillment of their responsibilities;

(11) Discussion of potential or actual emergencies related to preservation of the public peace, health and safety;

(12) Where the public body has requested an attorney-at-law to render his legal advice or opinion concerning an issue or matter under discussion by the public body and where it has not yet taken a public stand or reached a conclusion in the matter; or

(13) Preliminary discussions resulting from tentative information relating to the management of the public schools in the following areas: School attendance zones; personnel needs; and fiscal requirements.

(c) A public body may hold an executive session closed to the public upon affirmative vote of a majority of members present at a meeting of the public body. The purpose for such executive session shall be announced ahead of time and shall be limited to the purposes listed in subsection (b) of this section. Executive sessions may be held only for the discussion of public business, and all voting on public business must be made at a public meeting and the results of the vote made public, unless disclosure of the existence or results of the vote would disclose information properly the subject of an executive session pursuant to subsection (b) of this section.

(d) This section shall not prohibit the removal of any person from a public meeting who is willfully and seriously disruptive of the conduct of such meeting.

(e) (1) This subsection concerning notice of meetings shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to the General Assembly.

(2) All public bodies shall give public notice of their regular meetings at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings; however, the agenda shall be subject to change to include additional items or the deletion of items at the time of the public body's meeting.

(3) All public bodies shall give public notice of the type set forth in paragraph (2) of this subsection of any special or rescheduled meeting no later than 24 hours be. re such meeting.

(4) Public notice required by this subsection shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, and making a reasonable number of such notices available.

(5) When the agenda is not available as of the time of the initial posting of the public notice it shall be added to the notice at least 6 hours in advance of said meeting.

(f) Each public body shall make available for public inspection and copying as a public record minutes of all regular, special and emergency meetings. Such minutes shall include a record of those members present and a record, by individual members, of each vote taken and action agreed upon. Such minutes or portions thereof, and any public records pertaining to executive sessions conducted pursuant to this section, may be withheld from public disclosure so long as public disclosure would defeat the lawful purpose for the executive

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session, but no longer.

(g) This section shall not apply to the proceedings of:

(1) Grand juries;

(2) Petit juries;

(3) Special juries;

(4) The deliberations of any court;

(5) The board of Pardons and Parole; and

(6) Public bodies having only 1 member. (60 Del. Laws, c. 641, § 1.)

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§ 10005. Enforcement.

Any action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery. Any citizen may challenge the validity under this chapter of any action of a public body by filing suit within 30 days of the citizen's learning of such action but in no event later than 6 months after the date of the action. Any citizen denied access to public records as provided in this chapter may bring suit within 10 days of such denial. Venue in such cases where access to public records is denied shall be placed in a court of competent jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides. Remedies permitted by this section include a declaratory judgment, writ of mandamus and other appropriate relief. (60 Del. Laws, c. 641, § 1.)

DELAWARE

EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER SEVENTY-ONE

TO: Heads of All State Departments and Agencies

RE: Creation of C.L.U.E.S. (Criminal Law Uniform Enforcement System) Administrative Organization

WHEREAS, law enforcement and the administration of justice are of general interest to the citizens of Delaware and the State and local governments; and

WHEREAS, comprehensive data and information systems are required in the pursuance of more effective and efficient law enforcement and administration of justice; and

WHEREAS, the Governor of the State of Delaware has agreed to participate with the Law Enforcement Assistance Administration of the United States Department of Justice in the development of the Comprehensive Data Systems Program; and

WHEREAS, the aforementioned agreement, as well as Law Enforcement and the Administration of Justice in the State of Delaware, requires an administrative organization to plan, execute and control comprehensive data systems.

NOW, THEREFORE, I, SHERMAN W. TRIBBITT, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby order and direct as follows:

1. The C.L.U.E.S. (Criminal Law Uniform Enforcement System) Administrative Organization is hereby established and authorized to develop, implement and control comprehensive data systems in support of the agencies and courts of the criminal justice system of the State of Delaware.

A. ORGANIZATION

1. The Governor's Crime Reduction Task Force is hereby designated as Advisory Committee to the organization.

2. The C.L.U.E.S. Board of Managers is hereby created to assume direct responsibility for administration of comprehensive data systems.

3. The C.L.U.E.S. Statistical Analysis Center is hereby created to provide professional staff to the Board of Managers, to coordinate the State's comprehensive data systems program, to provide interpretive analysis of collected data, and to insure quality control of data collected and reported.

B. MEMBERSHIP

1. The C.L.U.E.S. Board of Managers shall be composed of nine members, who shall be appointed by the Governor, and whose membership shall consist of the following:

a. One member of the Delaware State Police, to be designated by the Superintendent of the Delaware State Police..

b. One member of a county, city or local police department, to be designated by the Regional Council of Chiefs of Police.

c. Two members to be designated by the Secretary of Health and Social Services -- or the Cabinet Secretary responsible for the following divisions: one member being from the Division of Adult Corrections and one member being from the Division of Juvenile Corrections.

d. Two members to be designated by the Chief Justice of the State of Delaware -- one member to represent adult courts and one to represent juvenile courts.

e. Two members of the Delaware State Legislature, to be designated by the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

f. One member-at-large to be chosen by the Governor.

The above-designated nine members shall constitute the voting membership of the Board of Managers. In addition, there shall be four non-voting members:

a. One member of the Delaware State Bureau of Identification, to be designated by the Superintendent of the Delaware State Police.

b. One member of the State Division of Central Data Processing, to be designated by the Director of that Division.

c. One member of the Delaware Agency to Reduce Crime, to be designated by the Director of that Agency.

d. One member of the State Planning Office to be designated by the Director of that Office.

2. The Statistical Analysis Center shall be staffed initially by a Director, a Statistician, and a Secretary. The Director is empowered to employ additional staff, subject to approval by the Board of Managers and the laws of the State of Delaware.

C. RULES AND PROCEDURES

1. The Governor's Crime Reduction Task Force shall determine its own rules and procedures for the establishment of policy and review of comprehensive data systems development and implementation.

2. The Board of Managers shall determine its own rules and procedures, subject to the approval of the Governor's Crime Reduction Task Force. The Board shall also be responsible for rules and procedures required in the conduct of the Statistical Analysis Center.

The Board shall also be empowered to enter into contractual obligations for the use of external consultants, subject to the laws of the State and the limitations of this program. Such contracts shall be subject to final approval of the Governor's Crime Reduction Task Force.

D. TERMS OF SERVICE

1. The members of the Board of Managers serve at the pleasure of and for the term prescribed by the office of individual(s) designating them for appointment.

2. The Director of the Statistical Analysis Center serves at the pleasure of the Board of Managers.

2. This Executive Order shall be effective this date and the first meeting of the Board of Managers shall be held within fifteen calendar days of the date letters of appointment are issued by the Governor.

3. The Vice-Chairman of the Governor's Crime Reduction Task Force is hereby instructed to take such action as may be necessary for the implementation of this Executive Order, subject to the review and approval of the Governor.

APPROVED this 10th day of April 1975

Governor

ATTEST:

Secretary of State

§ 4-134. Records—General complaint files—Lost, missing, or stolen property—Personnel records of police.

The Commissioner of the District of Columbia shall cause the Metropolitan Police force to keep the following records:

(1) General complaint files, in which shall be entered every complaint preferred upon personal knowledge of the circumstances thereof, with the name and residence of the complainant;

(2) Records of lost, missing, or stolen property;

(3) A personnel record of each member of the Metropolitan Police force, which shall contain his name, and residence; the date and place of his birth; his marital status; the date he became a citizen, if foreign born; his age; his former occupation; and the dates of his appointment and separation from office, together with the cause of the latter;

(4) Arrest books, which shall contain the following information:

(a) Case number, date of arrest, and time of recording arrest in arrest book;

(b) Name, address, date of birth, color, birthplace, occupation, and marital status of person arrested;

(c) Offense with which person arrested was charged and place where person was arrested;

(d) Name and address of complainant;

(e) Name of arresting officer; and

(f) Disposition of case; and

(5) Such other records as the District of Columbia Council considers necessary for the efficient operation of the Metropolitan Police force. (R. S., D. C., § 386; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(a); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 1.)

§ 4–134a. Central criminal records.

(a) In addition to the records kept under section 4–134, the Metropolitan Police force shall keep a record of each case in which an individual in the custody of any police force or of the United States marshal is charged with having committed a criminal offense in the District (except those traffic violations and other petty offenses to which the District of Columbia Council determines this section should not apply). The record shall show—

(1) the circumstances under which the individual came into the custody of the police or the United States marshal;

(2) the charge originally placed against him, and any subsequent changes in the charge (if he is charged with murder, manslaughter, or causing the death of another by the operation of a vehicle at an immoderate speed or in a careless, reckless, or negligent manner, the charge shall be recorded as "homicide");

(3) if he is released (except on bail) without having his guilt or innocence of the charge determined by a court, the circumstances under which he is released;

(4) if his guilt or innocence is so determined, the judgment of the court;

(5) if he is convicted, the sentence imposed; and

(6) if, after being confined in a correctional institution, he is released therefrom, the circumstances of his release.

(b) The Attorney General, the Corporation Counsel, the United States Commissioner for the District, the clerk of the district court, the clerk of the Superior Court of the District of Columbia; and the Director of the Department of Corrections shall furnish the Chief of Police with such information as the Commissioner of the District of Columbia considers necessary to enable the Metropolitan Police force to carry out this section. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 362; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

§ 4-134b. Reports by independent police.

Reports shall be made to the Chief of Police, in accordance with regulations prescribed by the Commissioner of the District of Columbia, of each offense reported to, and each arrest made by, any other police force operating in the District. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 303.)

§ 4-134c. Notice of release of prisoners.

(a) Whenever the Board of Parole of the District of Columbia has authorized the release of a prisoner under section 24-204, or the United States Board of Parole has authorized the release of a prisoner under section 24-206, it shall notify the Chief of Police of that fact as far in advance of the prisoner's release as possible.

(b) Except in cases covered by subsection (a) of this section, notice that a prisoner under sentence of six months or more is to be released from an institution under the management and regulation of the Director of the Department of Corrections shall be given to the Chief of Police as far in advance of the prisoner's release as possible. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 304.)

§ 4-135. Records open to public inspection.

The records to be kept by paragraphs (1), (2), and (4) of section 4-134 shall be open to public inspection when not in actual use, and this requirement shall be enforceable by mandatory injunction issued by the Superior Court of the District of Columbia on the application of any person. (R. S., D. C., § 389, June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(b); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 2; July 29, 1970, Pub. L. 91-358, title I, § 155(c)(13), 84 Stat. 571; Oct. 25, 1972, Pub. L. 92-543, § 1, 86 Stat. 1108.)

§ 4-137. Preservation and destruction of records.

All records of the Metropolitan Police force shall be preserved, except that the Commissioner of the District of Columbia, upon recommendation of the major and superintendent of police, may cause records which it considers to be obsolete or of no further value to be destroyed. (R.S., D.C., § 390; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(c).)

CHAPTER 119. PUBLIC RECORDS

119.01 General state policy on public records

It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person.
Amended by Laws 1973, c. 73-98, § 1, eff. Oct. 1, 1973; Laws 1975, c. 75-225, § 2, eff. July 1, 1975.

119.011 Definitions

For the purpose of this chapter:

(1) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(2) "Agency" shall mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.
Amended by Laws 1973, c. 73-98, § 2, eff. Oct. 1, 1973; Laws 1975, c. 75-225, § 3, eff. July 1, 1975.

119.07 Inspection and examination of records; exemptions

(1) Every person who has custody of public records shall permit the records to be inspected and examined by any person desiring to do so, at reasonable times, under reasonable conditions, and under supervision by the custodian of the records or his designee. The custodian shall furnish copies or certified copies of the records upon payment of fees as prescribed by law or, if fees are not prescribed by law, upon payment of the actual cost of duplication of the copies. Unless otherwise provided by law, the fees to be charged for duplication of public records shall be collected, deposited, and accounted for in the manner prescribed for other operating funds of the agency.

(2)(a) All public records which presently are provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, shall be exempt from the provisions of subsection (1).

(b) All public records referred to in ss. 794.03, 198.09, 199.222, 658.10(1), 624.-319(3), (4), 624.311(2), and 63.181, are exempt from the provisions of subsection (1).

(c) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment shall be exempt from the provisions of subsection (1). However, an examinee shall have the right to review his own completed examination.
Amended by Laws 1975, c. 75-225, § 4, eff. July 1, 1975.

119.08 Photographing public records

(1) In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public record, instruments or documents, any person shall hereafter have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy.

(2) Such work shall be done under the supervision of the lawful custodian of the said records, who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall, where possible, be done in the room where the said records, documents or instruments are by law kept, but if the same in the judgment of the lawful custodian of the said

records, documents or instruments be impossible or impracticable, then the said work shall be done in such other room or place as nearly adjacent to the room where the said records, documents and instruments are kept as determined by the lawful custodian thereof.

(3) Where the providing of another room or place is necessary, the expense of providing the same shall be paid by the person desiring to photograph the said records, instruments or documents. While the said work hereinbefore mentioned is in progress, the lawful custodian of said records may charge the person desiring to make the said photographs for the services of a deputy of the lawful custodian of said records, documents or instruments to supervise the same, or for the services of the said lawful custodian of the same in so doing at a rate of compensation to be agreed upon by the person desiring to make the said photographs and the custodian of the said records, documents or instruments, or in case the same fail to agree as to the said charge, then by the lawful custodian thereof.

119.10 Violation of chapter a misdemeanor

Any person willfully and knowingly violating any of the provisions of this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

119.11 Accelerated hearing; immediate compliance

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period. The filing of a notice of appeal shall not operate as an automatic stay.

(3) A stay order shall not be issued unless the court determines that there is substantial probability that opening the records for inspection will result in significant damage.

Added by Laws 1975, c. 75-225, § 5, eff. July 1, 1975.

Library References
Records ⇐14.
C.J.S. Records § 35 et seq.

119.12 Attorney's fees

(1) Whenever an action has been filed against an agency to enforce the provisions of this chapter and the court determines that such agency unreasonably refused to permit public records to be inspected, the court shall assess a reasonable attorney's fee against such agency.

(2) Whenever an agency appeals a court order requiring it to permit inspection of records pursuant to this chapter and such order is affirmed, the court shall assess a reasonable attorney's fees for the appeal against such agency.

Added by Laws 1975, c. 75-225, § 5, eff. July 1, 1975.

893.14 Conditional discharge and expunction of records for first offense possession

(1) If a person who has not previously been convicted of a violation of the drug abuse laws of any state or the United States is convicted of a violation of § 893.13(1)(e), (1)(f), (3)(a) 4., or (3)(b), relating to possession, after trial or upon a plea of guilty, the court may, without entering a judgment of guilty, and with the consent of such person, defer further proceeding and place him on probation upon such reasonable condition as may be required and for such period not to exceed 1 year as the court may prescribe. Discharge and dismissal under this section shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of [Criminal] [1] Law Enforcement solely for the purpose of use by the courts in any subsequent criminal proceedings and in determining whether such person qualifies under this section. Discharge and dismissal hereunder shall not be deemed a conviction for purposes of disqualification or disabilities imposed by law upon conviction of a crime, but it shall be deemed a conviction for the purpose of determining whether a defendant in a subsequent criminal prosecution is a multiple offender. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the discharge and dismissal of an offender under subsection (1), or if a person is acquitted or released without being adjudicated guilty, the court shall issue an order to expunge from all official records other than the nonpublic records retained by the Department of [Criminal] [1] Law Enforcement under subsection (1) all official recordation relating to his arrest, indictment or information, trial, finding of guilt, and dismissal and discharge pursuant to this section. The effect of such order shall be to restore such person, in contemplation of law, to the status he occupied before such arrest or indictment or information. Except in subsequent criminal prosecutions in which the person is a defendant, no person as to whom such order has been entered shall be held thereafter, under any provision of Florida law, to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment, information, or trial in response to any inquiry made of him for any purpose.

[1] The word "[Criminal]" was inserted by the division of statutory revisio as the department of law enforcement was effectively replaced by the depart ment of criminal law enforcement created by Laws 1974, c. 74-386.

20.331 Department of Criminal Law Enforcement

(1) There is hereby created a Department of Criminal Law Enforcement. The head of the department is the governor and cabinet. The executive director of the department shall be appointed by the governor with the approval of three (3) members of the cabinet and subject to confirmation by the senate. The executive director shall serve at the pleasure of the governor and cabinet.

(2) The following divisions, and bureaus within these divisions, of the Department of Criminal Law Enforcement are established:

(a) Division of Law Enforcement.
1. Field Investigation Bureau.
2. Criminal Intelligence Bureau.
3. Operational Services Bureau.
4. Strategic Investigations Bureau.
(b) Division of Local Law Enforcement Assistance.
(c) Division of Criminal Justice Information Systems.
1. The Uniform Crime Reports and Statistics Bureau.
2. Law Enforcement Data Center Bureau.
3. Crime Information Bureau.
(d) Division of Standards and Training.
1. Bureau of Standards.
2. Bureau of Training.
3. Bureau of Planning and Administration.
(e) Division of Staff Services.
1. Administrative Services Bureau.
2. Crime Laboratory Bureau.
3. Inspections Bureau.

(3) The department is authorized to establish such bureaus within any division as shall be deemed necessary to carry out the provisions of chapter 74-386, Laws of Florida.

901.33 Arrest records; expunging; exceptions

If a person who has never previously been convicted of a criminal offense or municipal ordinance violation is charged with a violation of a municipal ordinance or a felony or misdemeanor, but is acquitted or released without being adjudicated guilty, he may file a *motion with the court* wherein the charge was brought to expunge the record *of arrest from the* official records of the arresting authority. Notice of such motion shall be served upon the prosecuting authority charged with the duty of prosecuting the offense and upon the arresting authority. The court shall issue an order to expunge all official records relating to such arrest, indictment or information, trial, and dismissal or discharge. However, the court shall require that non-public records be retained by the Department of [Criminal] Law Enforcement and be made available by said Department only to Law Enforcement Agencies in the event of a future investigation of said person relative to a pending charge, indictment, or information against or upon said person for an act which, if committed, would be an offense similar in nature to the offense for which said person had been charged and not found guilty. The court shall not enter an order expunging the records as above provided when there are several acts, or said person has been charged with several offenses originating out of or related to the offense or offenses for which such person had been charged and not found guilty, and when the charge and adjudication of non-guilt did not include all such charges or all such several acts. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of Florida law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest in response to any non-judicial inquiry made of him for any purpose.

Laws 1974, c. 74-206, § 1, eff. June 18, 1974.

943.05 Division of Criminal Justice Information Systems; duties; crime reports

(1) There is created a Division of Criminal Justice Information Systems [within the Department of Criminal Law Enforcement].[1] The division shall be supervised by a director who shall be employed upon the recommendation of the executive director.

(2) The division shall:

(a) Establish a system of fingerprint analysis and identification.

(b) Establish a system of intrastate communication of vital statistics and information relating to crimes, criminals, and criminal activity. The division may cooperate with state, county, municipal, and federal agencies in the establishment of such a system.

(c) Establish a system of uniform crime reports and statistical analysis.

1. All state, county and municipal law enforcement agencies shall submit to the department uniform crime reports setting forth their activities in connection with law enforcement.

2. It shall be the duty of the division, under the supervision of the executive director, to adopt and promulgate rules and regulations prescribing the form, general content, and time and manner of submission of such uniform crime reports required pursuant to subparagraph 1. The rules so adopted and promulgated shall be filed with the department of state pursuant to chapter 120, and shall have the force and effect of law. Willful or repeated failure by any state, county, or municipal law enforcement official to submit the uniform crime reports required by subparagraph 1, shall constitute neglect of duty in public office.

3. The division shall correlate the reports submitted to it pursuant to subparagraph 1, and shall compile and submit to the governor and the legislature semiannual reports based on such reports. A copy of said reports shall be furnished to all prosecuting authorities and law enforcement agencies.
Laws 1974, c. 74-386, § 5, eff. Aug. 1, 1974.

[1] Bracketed language inserted by the division of statutory revision in the interest of clarity.

943.06 Criminal Justice Information Systems Council

There is created a Criminal Justice Information Systems Council within the Department of Criminal Law Enforcement.

(1) The council shall be composed of nine (9) members, consisting of the attorney general or a designated assistant; the chairman of the Parole and Probation Commission; the state courts administrator; and six (6) members, to be appointed by the governor, consisting of two (2) sheriffs, two (2) police chiefs, one (1) public defender, and one (1) state attorney.

(2) Members appointed by the governor shall be appointed for terms of four (4) years, except that in the first appointment under this section, two (2) members shall be appointed for terms of two (2) years, two (2) members for terms of three (3) years, and two (2) members for terms of four (4) years; and the terms of such members shall be designated by the governor at the time of appointment. No appointive member shall serve beyond the time he ceases to hold the office or employment by reason of which he was eligible for appointment to the council. Any member appointed to fill a vacancy [occurring][1] because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of his predecessor or until a successor is appointed and qualifies.

(3) The council shall annually elect its chairman and other officers. The council shall hold at least four (4) regular meetings each year at the call of the chairman or upon the written request by three (3) members of the council. A majority of the members of the council constitutes a quorum.

(4) Membership on the council shall not disqualify a member from holding any other public office or being employed by a public entity except that no member of the legislature shall serve on the council. The legislature finds that the council serves a state, county, and municipal purpose and that service on the council is consistent with a member's principal service in a public office or employment.

(5) Members of the council shall serve without compensation, but shall be entitled to be reimbursed for per diem and traveling expenses as provided by § 112.061.
Laws 1974, c. 74-386, § 6, eff. Aug. 1, 1974.

[1] Bracketed language inserted by the division of statutory revision in the interest of clarity.

943.07 Definitions; §§ 943.06–943.08

The following words and phrases as used in §§ 943.06, 943.07, and 943.08 shall have the following meanings, unless the context otherwise requires:

(1) "Information system" means a system, whether automated or manual, operated or leased by state or local government or governments, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of information.

(2) "Criminal justice information system" means an information system for the collection, processing, preservation, or dissemination of criminal justice information.

(3) "Criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, identification record information, and wanted persons record information. The term shall not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term shall not include criminal justice intelligence information.

(4) "Criminal justice intelligence information" means information about an individual on matters pertaining to the administration of criminal justice, other than criminal justice information, which is indexed under an individual's name or which is retrievable by reference to identifiable individuals by name or otherwise. This term shall not include information on criminal justice agency personnel or information on lawyers, victims, witnesses, or jurors collected in connection with a case in which they were involved.

(5) "Dissemination" means the transmission of information whether orally or in writing.

Laws 1974, c. 74–386, § 6, eff. Aug. 1, 1974.

943.08 Duties; Criminal Justice Information Systems Council

The council shall develop and recommend operating policies and procedures relating to the following areas:

(1) The exchange of criminal justice information and criminal justice intelligence information and the operation of criminal justice information systems and criminal justice intelligence information systems, both interstate and intrastate;

(2) The installation of criminal justice information systems and criminal justice intelligence information systems and the exchange of information by such systems within the state and with similar systems and criminal justice agencies in other states and in the federal government;

(3) The physical security of the system, to prevent unauthorized disclosure of information contained in the system and to insure that the criminal justice information in the system is currently and accurately revised to include subsequently revised information;

(4) The purging or sealing of criminal justice information upon order of a court of competent jurisdiction or when required by law;

(5) The dissemination of criminal justice information to persons or agencies [not associated with criminal justice][1] when such dissemination is authorized by law;

(6) The access to criminal justice information maintained by any criminal justice agency by any person about whom such information is maintained for the purpose of challenge, correction, or addition of explanatory material; and

(7) Such other areas as relate to the collection and dissemination of criminal justice information and criminal justice intelligence information.

Laws 1974, c. 74–386, § 6, eff. Aug. 1, 1974.

[1] Bracketed language substituted for the phrase "noncriminal justice" by the division of statutory revision.

943.09 Division of Standards and Training

There is created a Division of Standards and Training [within the Department of Criminal Law Enforcement].[1] The department shall employ a division director with the approval of the [Police Standards and Training][1] Commission.

Laws 1974, c. 74–386, § 7, eff. Aug. 1, 1974.

943.11 Police Standards and Training Commission; creation; membership; meetings; compensation

(1) There is created a Police Standards and Training Commission within the Department of Criminal Law Enforcement. The commission shall be composed of twelve members, consisting of the attorney general or designated assistant; the commissioner of education or a designated assistant; the special agent of the Federal Bureau of Investigation in Florida in charge of training; the executive director of the department of highway safety and motor vehicles; and eight (8) members to be appointed by the governor, consisting of three (3) sheriffs, three (3) chiefs of police, and two (2) police officers who are neither sheriffs nor chiefs of police. Prior to the appointment, the sheriff, chief of police, and police officer members shall have had at least eight (8) years' experience in law enforcement as police officers.

(2) Members appointed by the governor shall be appointed for terms of four (4) years except that in the first appointments under this section, two (2) members shall be appointed for terms of one (1) year, two (2) members for terms of two (2) years, two (2) members for terms of three (3) years, and two (2) members for terms of four (4) years; and the terms of such members shall be designated by the governor at the time of appointment. No appointive members shall serve beyond the time he ceases to hold the office or employment by reason of which he was eligible for appointment to the commission. Any member appointed to fill a vacancy [occurring][1] because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of his predecessor or until a successor is appointed and qualifies.

(3) The governor, in appointing the three (3) sheriffs, three (3) chiefs of police, and two (2) police officers, shall take into consideration representation by geography, population, and other relevant factors in order that the representation on the commission be apportioned to give representation to the state at large rather than to a particular area.

(4) Membership on the commission shall not disqualify a member from holding any other public office or being employed by a public entity, except that no member of the legislature shall serve on the commission. The legislature finds that the commission serves a state, county, and municipal purpose and that service on the commission is consistent with a member's principal service in a public office or employment.

(5) The commission shall hold at least four (4) regular meetings each year at the call of the chairman or upon the written request by three (3) members of the commission. A majority of the members of the commission constitutes a quorum.

(6) Members of the commission shall serve without compensation but shall be entitled to be reimbursed for per diem and traveling expenses as provided by § 112.061.

Laws 1974, c. 74-386, § 7, eff. Aug. 1, 1974.

[1] Bracketed word inserted by the division of statutory revision in the interest of clarity.

Library references
Municipal Corporations ⇨184(2).
C.J.S. Municipal Corporations § 571.

943.12 Special powers; police officer training

In connection with the employment and training of police officers, the commission shall have special power to:

(1) Establish uniform minimum standards for the employment and training of police officers, including standards with respect to parking enforcement specialists as described in s. 316.016(3)(c), and including qualifications and requirements as may be established by the commission subject to specific provisions which are contained in this chapter.

(2) Establish uniform minimum standards, with reasonable classifications as determined by the commission, for the employment and training of part-time or auxiliary police officers.

(3) Establish minimum curricular requirements for schools operated by or for any municipality or the state or any political subdivision thereof for the specific purpose of training police recruits or police officers.

(4) Consult and cooperate with municipalities or the state or any political subdivision thereof and with universities, colleges, community colleges, and other educational institutions concerning the development of police training schools and programs or courses of instruction, including, but not necessarily limited to, education and training in the areas of police science, police administration, and all allied and supporting fields.

(5) Approve institutions and facilities for school operation by or for any municipality or the state or any political subdivison thereof for the specific purpose of training police officers and police recruits.

(6) Issue certificates of competency to persons who, by reason of experience and completion of advanced education or inservice or specialized training, are especially qualified for particular aspects or classes of police work.

(7) Make or encourage studies on any aspect of police education and training or recruitment.

(8) Make recommendations concerning any matter within its purview pursuant to this chapter.

(9) Promulgate rules and regulations for the administration of this chapter pursuant to chapter 120.

Laws 1974, c. 74-386, § 7, eff. Aug. 1, 1974. Amended by Laws 1976, c. 76-270, § 2, eff. July 1, 1976.

943.14 Police training programs; private police schools; certificates and diplomas; exemptions; injunction proceedings

(1) The commission shall establish and maintain a police training program with such curriculum, and administered by such agencies and institutions, as it approves, and shall issue a certificate of completion to any person satisfactorily completing the training program established.

(2) The commission shall issue a certificate of compliance to any person satisfactorily complying with the training program established in subsection (1) and the qualifications for employment in s. 943.13. No person shall be employed as a police officer by any employing agency until he has obtained such certificate of compliance, except that a written notice of temporary employment authorization may be issued to him by the commission upon evidence from the employing agency that a critical need to employ exists and no approved training program is available in the geographic area, or no assigned state training program for a state officer [is available,] [1] as determined by the commission, within a reasonable time. Any person employed as a police officer through temporary employment authorization must enroll in the first training program offered in the geographic area, or assigned state training program for a state officer [offered] [1] as determined by the commission, subsequent to his employment. In no case shall a temporary employment authorization be in force for more than 180 consecutive days, and such temporary employment authorization shall not be renewable or transferable.

(3) The commission may issue a certificate to any person who has received training which the commission has determined is at least equivalent to that required by the commission in the state and who has satisfactorily complied with all other requirements of this chapter.

(4) All training or educational subjects which are taught, instructed, or used in any police or law enforcement schools or taught, instructed, or used in any private police training school, shall first be approved in writing by the commission.

(5) Any certificates or diplomas issued by any police or law enforcement school or any private police training school, which relate to completion, graduation, or attendance in police training or educational subjects, or related matter, shall be approved by the commission.

(6) All personnel used as instructors, teachers, or evaluators by any of the aforementioned schools, corporations, or institutions shall be certified by the commission.

(7) Police or law enforcement schools, courses which are accredited and certified by the department of education in accordance with the rules and regulations of the commission, and any schools authorized specifically by the department of state to train those persons to be qualified pursuant to § 493.43 (6) are exempt from the requirements of subsections (4), (5), and (6).

(8) Police science or police administration courses or subjects which are a part of the curriculum of any accredited college, university, or community

college of this state, and all full-time instructors of such institutions, shall be exempt from the provisions of this section.

(9) At the request of the commission, the Department of Legal Affairs shall apply directly to the circuit court of any county wherein any such school conducts or carries on any business or where any unlawful practice contrary to this section is being committed for an injunction restraining any such school from operating contrary to this section. The court, in its discretion, may grant a temporary injunction restraining the operation of any such school contrary to this section, pending the outcome of said cause, and, upon final hearing, shall permanently enjoin such unlawful operations as are contrary to this section. The commission and the Department of Legal Affairs shall not be required to give any bond in any proceedings hereunder.

Laws 1974, c. 74-386, § 7, eff. Aug. 1, 1974. Amended by Laws 1976, c. 76-277, § 2, eff. June 28, 1976.

943.25 Advanced training; program; costs; funding

(1) The Division of Standards and Training is directed to establish and supervise, as approved by the commission, an advanced and highly specialized training program for the purpose of training police officers and support personnel in the prevention, investigation, detection, and identification of crime, and, upon request, to instruct law enforcement agencies within this state in these highly advanced and specialized areas.

(2) No fee or any other charge shall be assessed against any person, municipality, sheriff, county, or state law enforcement agency for the training, room, or board of any person; said expenses shall be borne by the state. Any compensation to any person during the period of his or her training shall be fixed and determined by the proper authority within the municipality, county, or state law enforcement agency sponsoring the person, and such compensation, if any, shall be paid directly to the person.

(3) All courts created by Article V of the Florida Constitution, any court hereafter created, and all municipal courts shall assess one dollar ($1.00) as a court cost against every person convicted for violation of a state penal or criminal statute or convicted for violation of a municipal or county ordinance. In addition, one dollar ($1.00) from every bond estreature or forfeited bail bond related to such penal statutes or penal ordinances shall be forwarded to the state treasurer as hereinafter described. However, no such assessment shall be made against any person convicted for violation of any state statute, municipal ordinance, or county ordinance relating to the parking of vehicles. All such costs collected by the aforesaid courts shall be collected and remitted to the department of revenue in accordance with administrative rules promulgated by the executive director of the department of revenue, for deposit in the state treasury and be earmarked to the department of criminal law enforcement and the trust fund for block grant matching, equally, and be disbursed by the department of administration to the bureau of criminal justice planning and assistance [of the Division of State Planning of the Department of Administration][1] and to the department of criminal law enforcement, equally, as provided herein. All funds earmarked to the department of criminal law enforcement shall be disbursed only for those purposes provided for in subsection (7). At such time as matching federal funds are no longer available under the provisions of Public Law 90-351, all funds collected shall be earmarked to the department of criminal law enforcement.

(4) The auditor general is directed in his audit of municipalities and courts to ascertain that such assessments have been collected and shall report to the legislature annually. All such records of such courts shall be open for his inspection.

(5) Municipalities and counties may assess an additional one dollar ($1.00) [, as aforesaid,][2] for law enforcement education expenditures for their respective law enforcement officers.

(6) All funds which have accumulated to the Florida police academy fund as of August 1, 1974, shall be transferred and made available to the department of criminal law enforcement for implementation of training programs and training facilities. No such funds, or funds from any other source, shall be expended for the planning or construction of any new facility or expansion of any existing facility without the specific prior approval of the legislature, designating the location and the amount to be expended for the training facility. However, this shall not prohibit the expenditure of any such funds for establishment or construction of, or improvements to, any facility for law enforcement training on a regional basis.

(7) The department of administration is authorized to approve, for disbursement from funds allocated for, and which are credited to, the department of criminal law enforcement, those sums necessary and required for the implementation of the training programs and training facilities submitted by the department and approved by the commission.

(8) A trust fund for block grant matching by the state is created under the administration of the bureau of criminal justice planning and assistance [of the Division of State Planning of the Department of Administration] [1]. Disbursement of said funds shall be made for the purpose of matching, implementing, and qualifying for the 1969 matching federal funds provided under the provisions of Public Law 90–351 for the 90th Congress of the United States, referred to as the "Omnibus Crime Control and Safe Streets Act of 1968." [3] The department of administration is authorized to approve, for disbursement from said trust fund, those sums necessary and required by the state for block grant matching federal funds on grants approved pursuant to said Public Law 90–351.

(9)(a) The department, either by contract or agreement, may authorize any state university or community college in the state, or any other organization, to provide training [for,] [1] or facilities for training, peace officers, which training shall include, but not be limited to, police techniques in detecting crime, apprehending criminals, and securing and preserving evidence.

(b) All law enforcement officers selected by the various law enforcement agencies, if their selection is approved by the department shall receive such training without cost.

Laws 1974, c. 74–386, § 8, eff. Aug. 1, 1974.

947.14 Records of commission

(1) It shall be the duty of the commission to obtain and place in its permanent records information as complete as may be practicably available on every person who may become subject to parole. Such information shall be obtained as soon as possible after imposition of sentence and shall, in the discretion of the commission, include among other things the following:

(a) A copy of the indictment or information, and a complete statement of the facts of the crime for which such person has been sentenced;

(b) The court in which the person was sentenced;

(c) The terms of the sentence;

(d) The name of the presiding judge, the prosecuting officers, the investigating officers, and the attorneys for the person convicted;

(e) A copy of all probation reports which may have been made;

(f) Any social, physical, mental, psychiatric or criminal record of such person.

(2) The commission, in its discretion, shall also obtain and place in its permanent records such information on every person who may be placed on probation, and on every person who may become subject to pardon and commutation of sentence.

(3) The commission shall immediately examine such records, and any other records which it obtains, and may make such other investigations as may be necessary.

(4) It shall be the duty of the court, and its prosecuting officials, to furnish to the commission upon its request such information and also to furnish such copies of such minutes and other records as may be in their possession or under their control.

(5) The division of family services of the department of health and rehabilitative services and all other state, county and city agencies, sheriffs and their deputies, and all peace officers shall cooperate with the commission and shall aid and assist it in the performance of its duties.

(6) The commission may make such rules as to the privacy or privilege of such information and its use by others than the commission and its staff as may be deemed expedient in the performance of its duties.

RULES

OF

THE FLORIDA DEPARTMENT OF CRIMINAL LAW ENFORCEMENT

CHAPTER 11C-4

CRIMINAL HISTORY RECORDS; FINGERPRINT CARD

AND DISPOSITION REPORTING PROCEDURES

11C-4.03 Arrest Fingerprint Card Submission. In order for the Department to properly carry out those mandates in Section 943.05, Florida Statutes, pertaining to the establishment and maintenance of criminal histories based on positive identification using fingerprint comparison, all law enforcement agencies of the State shall take the following action on all misdemeanor and felony arrests made:

(1) Complete at the time of arrest, as outlined in the Department's Identification Manual and on forms provided by the Department, a criminal arrest fingerprint card.

(2) Submit on a daily basis all completed fingerprint cards to the Department, attention: Crime Information Bureau, using procedures further detailed in the "Single Fingerprint Card Submission Program", in the Department's Identification Manual.

(3) The only exceptions to the foregoing requirements shall be that charges regarding drunkenness and minor traffic offenses as well as charges made the subject of a field citation under statutes such as section 901.28, Florida Statutes, need not be submitted to the Department unless, of

course, the arresting agency requires a criminal history check or major charges are associated with such charges.

(4) Charges regarding "minor traffic offenses" do not include:

(a) Driving while intoxicated;

(b) Leaving the scene of an accident;

(c) Fleeing or attempting to elude a police officer;

(d) Making a false accident report;

(e) Reckless driving;

(f) Other offenses against the traffic and motor vehicle laws which have not been decriminalized.

General Authority: 943.03, 943.05, F.S. Law Implemented: 943.05, F.S.

FIGURE B-6

11C-4.06 Final Disposition Reporting.

(1) In order for the Department to properly carry out those mandates set forth in §943.05, F.S., Ch. 1, Title 28, Part 20, C.F.R., and 42 U.S.C. 3771 in regard to the establishment and maintenance of current, complete, and accurate criminal histories, agencies, offices and officers in the Florida criminal justice community shall, to the maximum extent feasible, submit disposition data on criminal arrests, pretrial dispositions, trials, sentencing, confinement, parole and probation.

(2) The arresting agency shall initiate the disposition report and supply all fields of identifying and arrest information requested on the top half of the form provided by the Department for this purpose. The impressions of the right four fingers shall be obtained and placed in the bottom right corner of the report. These actions shall be accomplished simultaneously with the taking of fingerprints following an arrest.

(3) Other agencies, officers and offices shall, to the maximum extent feasible, submit disposition data to the Department for each arrest as follows:

(a) If the case is not forwarded to the prosecutor for action, the arresting agency shall complete the final disposition report.

(b) If the case is taken by a prosecuting authority, the arresting agency shall turn over the disposition report form to the prosecutor. Thereafter, the form will be executed by the prosecuting authority.

(c) Subsequent disposition reports shall be initiated by appropriate authorities to augment the record in regard to correctional, parole and probation information.

(4) Although interim transactions (i.e. turned over to, held for, pending) should be indicated in the designated area of the fingerprint card but not made the subject of a disposition report, it is essential that final disposition reports, as more fully described in Ch. 1, Title 28, C.F.R. 20.3(e), be submitted within 90 days after the final disposition occurs.

General Authority: 943.03, 943.05, F.S., Ch. 1, Title 28, Part 20 C.F.R. Law Implemented: 943.05, F.S., Ch. 1, Title 28, Part 20, C.F.R., 42 U.S.C. 3771 (b).

27-220 Names, addresses and ages of persons arrested to be obtained and recorded by sheriffs, chiefs of police and heads of other State law enforcement agencies

It shall be the duty of all sheriffs, chiefs of police, and the heads of any other State law enforcement agencies to obtain, or cause to be obtained, the name, address and age of all persons arrested by law enforcement officers under the supervision of such sheriffs, chiefs of police or heads of any other State law enforcement agencies, when any such person is charged with an offense against the laws of Georgia or any other State, or the United States. Such information shall be placed on appropriate records which each such law enforcement agency shall maintain, and such records shall be open for public inspection unless otherwise provided by law.

(Acts 1967, pp. 839, 840.)

CHAPTER 40-27. INSPECTION OF PUBLIC RECORDS

Sec.

40-2701 Right of public to inspect records

All State, county and municipal records, except those, which by order of a court of this State or by law, are prohibited from being open to inspection by the general public, shall be open for a personal inspection of any citizen of Georgia at a reasonable time and place, and those in charge of such records shall not refuse this privilege to any citizen.

(Acts 1959, p. 88.)

40-2702 Supervision of persons photographing records; charge for services of deputy

In all cases where a member of the public interested has a right to inspect or take extracts or make copies from any public records, instruments or documents, any such person shall hereafter have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian of the said records, who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall be done in the room where the said records, documents or instruments are by law kept. While the said work hereinbefore mentioned is in progress, the lawful custodian of said records may charge the person desiring to make the said photographs for the services of a deputy of the lawful custodian of said records, documents or instruments to supervise the same, or for the services of the said lawful custodian of the same in so doing at a rate of compensation to be agreed upon by the person desiring to make the said photographs and the custodian of the said records, documents or instruments.

(Acts 1959, pp. 88, 89.)

40-2703 Exception of certain records

The provisions of this Chapter shall not be applicable to records that are specifically required by the Federal Government to be kept confidential or to medical records and similar files, the disclosure of which would be an invasion of personal privacy. All records of hospital Authorities other than the foregoing shall be subject to to the provisions of this Chapter. All State officers and employees shall have a privilege to refuse to disclose the identity of any person who has furnished medical or other similar information which has or will become incorporated into any medical or public health investigation, study or report of the Department of Human Resources. The identity of such informant shall not be admissible in evidence in any court of the State unless the said court finds that the identity of the informant already has been otherwise disclosed.

(Acts 1967, p. 455; 1970, p. 163.)

92A-302 Duties; fingerprints; photographs, etc.

It shall be the duty of such Bureau to take, receive and forward fingerprints, photographs, descriptions and measurements of persons, in cooperation with the bureaus and departments of other States and of the United States; to exchange information relating to crime and criminals; to keep permanent files and records of such information procured or received; to provide for the scientific investigation of articles used in committing crimes, or articles, fingerprints or bloodstains found at the scenes of crimes; to provide for the testing and identification of weapons and projectiles fired therefrom. In the event such Bureau is maintained in cooperation with a municipality or any other division of this State, the services and records of the same shall at all times be accessible and available to the Department of Public Safety and any division thereof. The members of the Bureau shall have and are hereby vested with, in addition to the duties herein provided, the same authority, powers and duties as are possessed by the members of the Uniform Division under the provisions of this Title. Any district attorney of this State may request the assistance of the Georgia Bureau of Investigation to conduct and exercise its lawful powers and authorities in the investigation of any criminal matter.

(Acts 1937, pp. 322, 340; 1941, pp. 227, 228; 1977, pp. 752, 753, eff. March 23, 1977.)

CHAPTER 92A-25. UNIFORM CRIME REPORTING SYSTEM.

92A-2501. Submission of reports; contents.—The police department or other law enforcement agency of each incorporated municipality or county and the sheriff's department of each county, once each month upon a date and form prescribed and furnished by the Director of the Department of Public Safety, shall forward to said department a crime report, as herein provided. Each reporting department or agency shall report only the cases within its jurisdiction and upon which it is making, or has made, a primary police investigation. Said report shall be known as the "Uniform Crime Report" and shall include crimes reported and otherwise processed during the month preceding the month of report. Said report shall contain the number and nature of offenses committed, the disposition of such offenses and such other information as the Director of the Department of Public Safety shall specify, relating to the method, frequency, cause and prevention of crime. Under no circumstances shall the name of any person be reported in connection with the provisions of this Chapter. (Acts 1971, p. 381.)

92A-2502. Statewide compilation of statistics.—Upon receipt of the monthly uniform crime reports, the Department of Public Safety shall prepare a Statewide compilation of the statistics contained therein, and the resulting statistical compilation shall be available to any governmental law enforcement agency in the State and to the Federal Bureau of Investigation, upon request. The statistics made available through the uniform crime report shall be used for the purpose of studying the causes, trends and effects of crime in this State and for intelligence upon which to base a sounder program of crime detection and prevention and the apprehension of criminals. (Acts 1971, pp. 381, 382.)

92A-2503. Permissible reports.—Any governmental police agency which is not included within the description of those departments and agencies required to submit the monthly uniform crime report as provided in section 92A-2501, which desires to submit such a report, shall be furnished with the proper forms by the Department of Public Safety. When a report is received by the Department of Public Safety from a governmental police agency not required to make such report, the information contained therein shall be included within the monthly compilation provided for in section 92A-2502. (Acts 1971, pp. 381, 382.)

92A-2504. Wanted persons and stolen vehicles to be reported.—The chief of the police department or other law enforcement agency of each incorporated municipality or county and the sheriff of each county within this State shall report to said department, in a manner prescribed by said department, all persons wanted by, and all vehicles stolen from, their jurisdictions. The report shall be made as soon as is practical after the investigating department or agency either ascertains that a vehicle has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the reporting department or agency determines that it has grounds to believe that a vehicle was stolen or that the wanted person should be arrested. (Acts 1971, pp. 381, 382.)

92A-2505. Notification of changed status of wanted persons and stolen vehicles.—When, at any time after making a report as required by section 92A-2504, it is determined by the reporting department or agency that a person is no longer wanted, due to his apprehension, or any other factor, or when a vehicle reported stolen under section 92A-2504 is recovered, the chief of said police department or other law enforcement agency or the sheriff shall immediately notify the Department of Public Safety in a manner prescribed by the Director of said Department of Public Safety. (Acts 1971, pp. 381, 383.)

92A-2506. Exceptions.—The provisions of this Chapter shall not apply to misdemeanor traffic cases or to persons wanted for misdemeanor traffic offenses, or for the violation of any ordinance of any incorporated municipality. The provisions of this Chapter shall not be construed so as to affect, in any manner whotsoever, any existing or future laws and procedures governing the reporting of persons wanted for violations of traffic laws or for the violation of any ordinances of any incorporated municipality. (Acts 1971, pp. 381, 383.)

CHAPTER 92A-30. GEORGIA CRIME INFORMATION CENTER

92A-3001 Definitions

For the purposes of this Chapter, the following definitions shall have the meanings respectively ascribed to them in this section:

(a) "Criminal justice agencies" means and shall be understood to include those public agencies at all levels of government which perform as their principal function activities relating to the apprehension, prosecution, adjudication, or rehabilitation of criminal offenders.

(b) "Offense" means an act which is a felony, a misdemeanor, or a violation of a city, county, or town ordinance.

(c) "Criminal justice information system" means and shall be construed as to include all those agencies, procedures, mechanisms, media, and forms as well as the information itself which are or become involved in the origination, transmittal, storage, retrieval, and dissemination of information related to reported offenses, offenders, and the subsequent actions related to such events or persons.

(d) "Criminal justice information" means and shall include the following classes of information:

(1) "Secret" data includes information dealing with those elements of the operation and programming of the GCIC/CJIS computer system and the communications network, and satellite computer systems handling criminal justice information which prevents unlawful intrusion into the system.

(2) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, accusations, information or other formal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(3) "Sensitive" data contains statistical information in the form of reports, lists and documentation which may identify a group characteristic. It may apply to groups of persons, articles or vehicles, etc.; e.g., white males or stolen guns.

(4) "Restricted" data contains information relating to data-gathering techniques, distribution methods, manuals and forms.

(e) "Law enforcement agency" means a governmental unit of one or more persons employed full time or part time by the State, a State agency or department or a political subdivision of the State for the purpose of preventing and detecting crime and enforcing State laws or local

ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(Acts 1973, pp. 1301, 1303; 1976, p. 617, eff. July 1, 1976.)

Editorial Note
Acts 1976, p. 617, added subsections (d) and (e).

92A-3002 Establishment

(a) There is hereby established for the State of Georgia, within the Georgia Bureau of Investigation, a system for the intrastate communication of vital information relating to crimes, criminals, and criminal activity to be known as the Georgia Crime Information Center, hereinafter referred to as the GCIC. Central responsibility for the development, maintenance, and operation of the GCIC shall be vested with the Director of the GCIC with the assistance and guidance of the GCIC Council, the establishment of which is hereinafter provided.

(b) The Director of GCIC shall maintain the necessary staff along with support services to be procured within the Georgia State Government (computer services from Department of Administrative Services, physical space and logistic support from the Department of Public Safety, and other services or sources as necessary) to enable the effective and efficient performance of the duties and responsibilities ascribed to GCIC herein.

(c) All personnel of GCIC shall be administered according to appropriate special and standard schedules by the State Merit System of Personnel Administration with due recognition to be given by the latter to the special qualifications and availability of the types of individuals required in such an agency.

(Acts 1973, pp. 1301, 1303; 1976, pp. 617, 618, eff. July 1, 1976.)

Editorial Note
Acts 1976, pp. 617, 618, amended subsection (a).

92A-3003 Functions

The Georgia Crime Information Center shall:

(a) Obtain and file fingerprints, descriptions, photographs, and any other pertinent identifying data on persons who:

(1) have been or are hereafter arrested or taken into custody in this State:

(i) for an offense which is a felony;

(ii) for an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

(iii) for an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subparagraph (ii);

(iv) as a fugitive from justice;

(v) for any other offense designated by the Attorney General; or

(2) are or become well-known or habitual offenders, or

(3) are currently or become confined to any prison, penitentiary or other penal institution, or

(4) are unidentified human corpses found in State.

(b) Compare all fingerprint and other identifying data received with those already on file and whether or not a criminal record is found for that person, at once inform the requesting agency or arresting officer of such facts as may be disseminated consistent with applicable security and privacy laws and regulations. A log shall be maintained of all disseminations made of each individual criminal history including at least the date and recipient of such information.

(c) Provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes reported to and otherwise processed by any and all law enforcement agencies within the State as defined and provided for elsewhere in this Chapter.

(d) Develop, operate and maintain an information system which will support the collection, storage, retrieval, and dissemination of all crime and offender data described in this Chapter consistent with those principles of scope, security and responsiveness prescribed by this Chapter.

(e) Cooperate with all criminal justice agencies within the State in providing those forms, procedures, standards and related training assistance necessary for the uniform operation of the statewide GCIC.

(f) Offer assistance and, when practicable, instruction to all local law enforcement agencies in establishing efficient local records systems.

(g) Compile statistics on the nature and extent of crime in Georgia and compile other data related to planning for and operating criminal justice agencies, provided that such statistics do not identify persons. GCIC will make available all such statistical information obtained to the Governor, the General Assembly, and any other governmental agencies whose primary responsibilities include the planning, development, or execution of crime reduction programs. Access to such information by the latter governmental agencies will be on an individual written request basis wherein must be demonstrated a need to know, the intent of any analyses, dissemination of such analyses, and any security provisions deemed necessary by GCIC.

(h) Periodically publish statistics no less frequently than annually that do not identify persons, agencies, corporations or other legal entities and report such information to the Governor, the General Assembly, the State Crime Commission, State and local criminal justice agencies and the general public. Such information shall accurately reflect the level and nature of crime in this State and the operations in general of the different types of agencies within the criminal justice system.

(i) Make available upon request, to all local and State criminal justice agencies, to all Federal criminal justice agencies and criminal justice agencies in other States any information in the files of the GCIC which will aid these agencies in the performance of their official duties. For this purpose the GCIC shall operate on a 24-hour basis, seven days a week. Such information, when authorized by the council, may also be made available

to any other agency of this State or political subdivision of this State, and to any other Federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders.

(j) Cooperate with other agencies of this State, the crime information agencies of other States, and the Uniform Crime Reports and National Crime Information Center systems of the F.B.I. in developing and conducting an interstate, National and international system of criminal identification, records and statistics.

(k) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records as provided for elsewhere in this Chapter and to cooperate in the correction of the central GCIC records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual.

(l) Institute the necessary measures in the design, implementation, and continued operation of the criminal justice information system to ensure the privacy and security of the system. This will include establishing complete control over use and access of the system and restricting its integral resources and facilities to those either possessed or procured and controlled by criminal justice agencies as defined in this Chapter. Such security measures must meet standards to be set by the GCIC and its Advisory Council as well as those set by the nationally operated systems for interstate sharing of information.

(m) Provide availability by means of data processing, to files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of general assistance to law enforcement agencies.

(n) For the purpose of enforcing the provisions of this Chapter, GCIC shall maintain a field coordination and support unit whose agency shall have all the power conferred by law upon any peace officer of this State.

(o) Make records of adjudications of guilt available to private persons and businesses as follows:

(1) Make available to employers or their designated representatives, for the purpose of making employment and job assignment decisions, records of employees or prospective employees whose duties involve or may involve:

(A) Working in or near private dwellings without immediate supervision;

(B) Custody or control over or access to cash or valuable items;

(C) Knowledge of or access to secret processes, trade secrets or other confidential business information;

(D) Insuring the security or safety of other employees, customers or property of the employer.

(2) Make available to appropriate personnel, or representatives designated by the owner or manager, of any business or commercial establishment records of persons apprehended for or suspected of a specific

criminal act or acts of which such establishment, or an employee of such establishment in the course of his employment, is a victim.

(3) GCIC shall charge fees for disseminating records pursuant to this Section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the State of providing such disseminations.

(4) Information disseminated pursuant to paragraph (1) above shall be available only to persons involved in the hiring, background investigation or job assignment of the person whose record is disseminated. Information disseminated pursuant to paragraph (2) above shall be available only to persons involved in deciding whether or not to prefer charges against the person whose record is disseminated or persons engaged in the investigation of such specific criminal act or acts. Any dissemination of any information obtained pursuant to this subsection to any person not specifically authorized hereby to receive it or any use of any information obtained pursuant to this subsection for any purpose other than the purpose for which it was obtained shall constitute a violation of section 92A-9939.

(5) In the event that a decision is made adverse to a person whose record was obtained pursuant to this subsection, the person will be informed by the business or person making such adverse decision of all information pertinent to this decision. This shall include information that a record was obtained from GCIC, the specific contents of such record and the effect that such record had upon the decision.

(6) Neither GCIC, its employees, nor any other agency or employee of the State shall be responsible for the accuracy of information or have any liability for defamation, invasion of privacy, negligence or any other claim in connection with any dissemination of information pursuant to this subsection.

(7) GCIC shall disseminate records pursuant to paragraph (1) only upon positive identification by fingerprint comparison. GCIC shall disseminate records pursuant to paragraph (2) on fingerprint indentification and when fingerprints are unavailable or time prohibits the use of fingerprints for identification, identification may be made through the use of the name, date of birth, sex and race of the person with appropriate qualifications. Local criminal justice agencies may disseminate records of adjudication of guilt, without fingerprint comparison or prior contact with GCIC, to the same individuals and for the same purposes as described in paragraphs (1) and (2) above, and may charge fees as needed to reimburse such agency for any costs of such checking.

(8) The GCIC Council is hereby empowered to adopt rules, regulations and forms to implement this subsection and provide for security and privacy of information disseminated pursuant hereto giving first priority to the criminal justice requirements of the Chapter. Such rules may include requirements for users, audits of users and such other procedures as may be necessary to prevent unauthorized use of criminal history record information and to insure compliance with Federal regulations.

The GCIC Council may adopt rules authorizing local law enforcement agencies to act as an agent for GCIC in receiving requests for information and disseminating information pursuant to such requests.

(Acts 1973, pp. 1301, 1305; 1976, pp. 617, 619, 620; 1976, pp. 1401, 1402; 1977, pp. 1243, 1244, eff. July 1, 1977.)

92A-3004 Duties of criminal justice agencies

(a) All criminal justice agencies within the State shall submit to GCIC fingerprints, descriptions, photographs (when specifically requested), and other identifying data on persons who have been lawfully arrested or taken into custody in this State for all felonies and certain misdemeanors and as otherwise described in subsection 92A-3003 (a). It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, parole and probation officers, wardens, or other persons in charge of correctional institutions in this State to furnish the GCIC with any other data deemed necessary by GCIC to carry out its responsibilities under this Chapter. Specifically, the responsibilities of criminal justice agencies in this area will require that:

(1) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, the fingerprints according to the fingerprint system of identification established by the Director of the F.B.I., full face and profile photographs (if photo equipment is available), and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in subsection 92A-3003 (a), of all persons arrested or taken into custody as fugitives from justice, and of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed taken within the previous year, are on file. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned if required by statute or upon court order. Any such dispositions must also be reported to the GCIC.

(2) Fingerprints and other identifying data required to be taken under paragraph (a)(1) shall be forwarded within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs s. ll be forwarded subsequently if GCIC so requests.

(3) All persons in charge of law enforcement agencies shall submit to the GCIC detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn the law enforcement agency concerned must immediately notify GCIC of such service or withdrawal. Also, the agency concerned must annually, no later than January 31 of each year, and at other times if requested by GCIC, confirm to GCIC all arrest warrants of this type which continue to be outstanding.

(4) All persons in charge of State penal correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the Director of the F.B.I. or as otherwise directed by GCIC, and full face and profile photographs of all persons received on commitment to these institutions. The print(s) so taken shall be forwarded to GCIC, together with any other identifying data requested, within 10 days after the arrival at the institution of the person committed. At the time of release, the institution will again obtain fingerprints as before and forward them to GCIC within 10 days along with any other related information requested by GCIC. Immediately upon release, the institution shall notify GCIC of the release of such person.

(5) All persons in charge of law enforcement agencies, all clerks of court, all municipal justices where they have no clerks, all justices of the peace, all persons in charge of State and county probation and parole offices, shall supply GCIC with the information described in section 92A-3003 on the basis of the forms and instructions to be supplied by GCIC.

(6) All persons in charge of law enforcement agencies in this State shall furnish GCIC with any other identifying data required in accordance with guidelines established by GCIC. All law enforcement agencies and penal and correctional institutions in this State having criminal identification files shall cooperate in providing to GCIC copies of such items in these files as will aid in establishing the nucleus of the State criminal identification file.

(b) All criminal justice agencies within the State shall submit to GCIC periodically at a time and in such form as prescribed by GCIC information regarding only the cases within its jurisdiction and in which it is or has been actively engaged. Said report shall be known as the "Uniform Crime Report" and shall include crimes reported and otherwise processed during the period preceding the period of report. Said report shall contain the number and nature of offenses committed, the disposition of such offenses and such other information as GCIC shall specify, relating to the method, frequency, cause and prevention of crime.

Any governmental agency which is not included within the description of those departments and agencies required to submit the uniform crime report, which desires to submit such a report, shall be furnished with the proper forms by the GCIC. When a report is received by GCIC from a governmental agency not required to make such a report, the information contained therein shall be included within the periodic compilation provided for in subsection 92A-3003 (h).

(c) All law enforcement agencies within the State shall report to GCIC in a manner prescribed by GCIC, all persons wanted by, and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as is practical after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the reporting department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(d) All law enforcement agencies with the State shall, if at any time after making a report as required by subsection (c) of this section it is determined by the reporting department or agency that a person is no longer wanted due to his apprehension or any other factor or when a vehicle or property stolen is recovered, immediately notify the GCIC of such status. Furthermore, if the agency making such apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall immediately notify the originating agency of the full particulars relating to such apprehension or recovery.

(Acts 1973, pp. 1301, 1307; 1976, pp. 617, 620, eff. July 1, 1976.)

92A-3005 Georgia Crime Information Center Council

(a) There is hereby created the Georgia Crime Information Center Council.

(b) The duties and responsibilities of this council are to:

(1) Advise and assist in the establishment of policies under which the GCIC is to be operated.

(2) Insure that the information obtained pursuant to this Chapter shall be restricted to the items specified in this Chapter and insure that the GCIC is administered so as not to accumulate any information or distribute any information that is not specifically approved in this Chapter.

(3) Insure that adequate security safeguards are incorporated so that the data available through this system is used only by properly authorized persons and agencies.

(4) Establish appropriate disciplinary measures to be taken by GCIC in the instance of violations of data reporting or dissemination of laws, rules, and regulations by criminal justice agencies or members thereof covered by this Chapter.

(5) Establish other policies which provide for the efficient and effective use and operation of the GCIC under the limitations imposed by the terms of this Chapter.

(c) The council shall consist of a maximum of 14 members as follows:

(1) The Attorney General or his designee;

(2) The Commissioner of Offender Rehabilitation or his designee;

(3) The Commissioner of Public Safety or his designee;

(4) The Director of the Georgia Bureau of Investigation or his designee;

(5) The Administrator of the State Crime Commission or his designee;

(6) The following members to be appointed by the Governor:

(A) A district attorney;

(B) A sheriff;

(C) A county commissioner;

(D) A chief of police;

(E) A chief executive of a municipality;

(F) A member of the State Bar of Georgia who is regularly engaged in criminal defense work;

(G) Three citizens of the State of Georgia.

The initial members shall be assigned terms by the Governor, three for two-year terms; three for three-year terms; and the remainder for four-year terms. Thereafter, terms shall be for four years. In the event there is a vacancy on the council, the Governor shall appoint to the unexpired term.

(7) No member shall continue to serve on the council when he no longer officially represents the function for which he was appointed, except the citizens appointed by the Governor.

(d) In addition to the above regular members of the council, a superior court judge, an inferior court judge and a clerk of superior court shall be appointed by the Governor as advisory members to meet and confer with the council. The Director of the Administrative Office of the Courts shall serve as an advisory member ex officio. The initial advisory members shall be appointed for two-year, three-year and four-year terms of office as designated by the Governor. Thereafter, terms shall be for four years.

(1) The advisory members provided for pursuant to subsection (d) shall not have voting powers.

(2) Any person appointed pursuant to subsection (d) shall serve only so long as he holds that office.

(e) Members of the council, their designees and those specified in

subsection (d) above shall serve without compensation, but within the limits of funds available, shall be entitled to reasonable reimbursement for all necessary expenses incurred in the discharge of their duties. Notwithstanding any other provision of this Chapter or other law, each member or designee shall receive the sum of $36 per diem for room and board which shall be paid only for days on which a member is in attendance at a meeting of the body. Such members shall be reimbursed for actual transportation costs incurred in attendance at a meeting of the body in the amount of the least expensive tariff when traveled by public carrier or an amount based on the mileage rate that is established by law for members of the General Assembly when traveled by private vehicle. Any reimbursement for expenses which is received from any other source, either private or public, shall be in lieu of the expenses authorized by this section: Provided, however, if a meeting is held within 50 miles of the member's residence or if the member does not incur a cost of public lodging for the meeting, the per diem authorized by this section shall be $10.

(f) The council shall meet at such times and places as it shall deem appropriate. A majority of the council shall constitute a quorum for transacting any business of the council. The council shall establish its own rules and regulations for performance of the responsibilities charged to it herein.

(Acts 1973, pp. 1301, 1310; 1976, pp. 617, 620, eff. July 1, 1976.)

Editorial Note

Acts 1976, pp. 617, 620, entirely superseded the former section.

92A-3006 Inspection of records; correction

Nothing in this Chapter shall be construed so as to give authority to any person, agency or corporation or other legal entity to invade the privacy of any citizen as defined by the General Assembly or the courts other than to the extent provided in this Chapter.

The Center shall make a person's criminal records available for inspection to him or his attorney upon written application to the GCIC. Should such person or his attorney contest the accuracy of any portion of such records, it shall be mandatory upon the GCIC to make available to said person or his attorney a copy of the contested record upon written application identifying the portion of the record contested and showing the reason for the contest of accuracy. Forms, procedures, identification and other related aspects pertinent to such access may be proscribed by GCIC in making access available.

If an individual believes such information to be inaccurate or incomplete he may request the original agency having custody or control of the detail records to purge, modify or supplement them and to so notify the GCIC of such changes. Should the agency decline to so act, or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual or his attorney may within 30 days of such decision enter an appeal to the superior court of the county of his residence or to the court in the county where such agency exists, with notice to the agency, pursuant to acquiring an order by such court that the subject information be expunged, modified,

or supplemented by the agency of record. The court in each such case shall conduct a de novo hearing, and may order such relief as it finds to be required by law. Such appeals shall be entered in the same manner as appeals are entered from the court of ordinary, except that the appellant shall not be required to post bond nor pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at the first term or in chambers. A notice sent by registered mail shall be sufficient service on the agency of disputed record that such appeal has been entered.

Should the record in question be found to be inaccurate, incomplete, or misleading, the court shall order it to be appropriately expunged, modified or supplemented by an explanatory notation. Each agency or individual in the State with custody, possession or control of any such record shall promptly cause each and every copy thereof in his custody, possession or control to be altered in accordance with the court's order. Notification of each such deletion, amendment and supplementary notation shall be promptly disseminated to any individuals or agencies to which the records in question have been communicated including GCIC, as well as to the individual whose records have been ordered so altered.

Agencies, including GCIC, at which criminal offender records are sought to be inspected may prescribe reasonable hours and places of inspection, and may impose such additional procedures, fees (not to exceed three dollars), or restrictions, including fingerprinting, as are reasonably necessary both to assure the records' security, to verify the identities of those who seek to inspect them, and to maintain an orderly and efficient mechanism for such accesses.

Nowhere in the procedures provided for in this section shall the provisions of the Georgia Administrative Procedure Act [Title 3A] apply.

(Acts 1973, pp. 1301, 1310.)

92A-3007 Neglect or refusal by officers to do any act required by Chapter

Any officer or official mentioned in this Chapter who shall neglect or refuse to make any report or to do any act required by any provision of this Chapter shall be deemed guilty of nonfeasance in office and subject to removal therefrom.

(Acts 1973, pp. 1301, 1310.)

92A-3008 Chapter supersedes existing laws; records of juvenile offenders exempted

(a) In the event of conflict, this Chapter shall to the extent of the conflict supersede all existing statutes which regulate, control or otherwise relate, directly or by implication, to the collection, storage, and dissemination or usage of fingerprint identification, offender criminal history, uniform crime reporting, and criminal justice activity data records or any existing statute which relate directly or by implication to any other provisions of this Chapter.

(b) Notwithstanding the provisions of subsection (a) of this section, this Chapter shall not be understood to alter, amend, or supersede the statutes and rules of law governing the collection, storage, dissemination or usage of records concerning individual juvenile offenders in which they are individually identified by name or other means.

(Acts 1973, pp. 1301, 1314.)

92A-9939 Violation of Chapter 92A-30, relating to the Georgia Crime Information Center

(a) Any person who knowingly requests, obtains or attempts to obtain criminal history record information under false pretenses, or who knowingly communicates or attempts to communicate criminal history record information to any agency or person except in accordance with Chapter 92A-30, relating to the Georgia Crime Information Center, or any member, officer, employee or agent of GCIC, the GCIC Council or any participating agency who knowingly falsifies criminal history record information, or any records relating thereto, shall for each such offense be fined not more than $5,000, or imprisoned for not more than two years, or both. Any person who communicates or attempts to communicate criminal history record information in a negligent manner not in accordance with Chapter 92A-30 shall for each such offense be fined not more than $100, or imprisoned not more than 10 days, or both.

(b) Any person who knowingly discloses or attempts to disclose the techniques or methods employed to insure the security and privacy of information or data contained in criminal justice information systems except in accordance with Chapter 92A-30 shall for each such offense be fined not more than $5,000 or imprisoned not more than two years, or both. Any person who discloses or attempts to disclose such information in a manner not permitted by Chapter 92A-30 shall for each such offense be fined not more than $100, or imprisoned not more than 10 days, or both.

(Acts 1973, pp. 1301, 1314; 1976, pp. 617, 623, eff. July 1, 1976.)

RULES
OF
GEORGIA CRIME INFORMATION CENTER
ADVISORY COUNCIL

CHAPTER 140-1
ORGANIZATION

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140-1-.01 Organization.

(1) There is a Director responsible for development, maintenance and operation.

(2) There is an Advisory Council responsible for providing assistance and guidance.

(3) All legal notices and correspondence respecting administrative proceedings shall be directed to the Director of the Georgia Crime Information Center.

(4) The mailing address of the Georgia Crime Information Center is Post Office Box 1456, Atlanta, Georgia, 30301.

(5) In matters of security and privacy all agencies and persons handling criminal justice information are subject to the provisions of the Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Crime Control Act of 1973 and Rules and Regulations promulgated by the United States Department of Justice. The rules and regulations of the Georgia Crime Information Center Advisory Council rest on the authority of federal rules and regulations as well as state law.

Authority 42 U.S.C. 3701, et seq. 28 CFR, § 20, Ga. L., 1973, pp. 1301, 1302, 1303, 1310-1312
Administrative History. Original Rule was filed on February 26, 1976; effective March 16, 1976

140-1-.02 General Definitions.

(1) All words defined in the Act shall have the same meaning for these Rules.

(2) The following definitions shall apply generally to all rules and regulations of the Georgia Crime Information Center:

March 16, 1976

(a) "Act" means that law which created the Georgia Crime Information Center, Georgia Laws 1973, p. 1301 as now or hereafter amended.

(b) "Criminal justice information" means and shall include the following classes of information:

1. "Secret" data includes information dealing with those elements of the operation and programming of the GCIC CJIS computer system and communications network, and satellite computer systems handling criminal justice information which prevent unlawful intrusion into the system.

2. "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, accusations, information, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

3. "Sensitive" data contains statistical information in the form of reports, lists and documentation which may identify group characteristics. It may apply to groups of persons, articles or vehicles, etc.; e.g. white males or stolen guns.

4. "Restricted" data contains information relating to data gathering techniques, distribution methods, manuals and forms.

(c) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing the reason for such postponement. Dispositions shall include, but not be limited to, acquittal, acquittal incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed—civil action, found insane, found mentally incompetent, pardoned, probation

before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(d) "Hearing" shall mean a right of the GCIC and of parties affected by any action of the GCIC to present, either formally or informally, relevant information, testimony, documents, evidence and argument as to why such action should or should not be taken.

(e) "Off-line users" means those criminal justice agencies who are not connected to the GCIC computer system.

(f) "Off-line information" is information exchanged with users by means other than the GCIC computer system.

(g) "On-line users" means those criminal justice agencies who are connected to the GCIC computer system or satellite computer system.

(h) "On-line information" is information exchanged with users via the GCIC computer systems, or satellite computer systems.

(i) "Satellite computer systems" means computers which connect to and exchange information with the GCIC/CJIS.

(j) "GCIC" means the Georgia Crime Information Center as created by the Act.

(k) "CJIS" means the Criminal Justice Information System as defined by the Act.

(l) The terms "data" and "information" are used interchangeably throughout the Rules.

Authority 28 CFR § 20.3, Ga. L. 1973, p. 1303. Administrative History. Original Rule was filed on February 25, 1976; effective March 16, 1976.

140-1-.03 Administrative Declaratory Rulings.

(1) Availability of declaratory ruling. Any person whose legal rights will be interfered with or impaired by the application of any statutory provision or any rule or order of the GCIC may petition the GCIC and request a declaratory ruling thereon. The GCIC will not render advisory opinions, resolve questions which have become moot or are abstract or hypothetical, or otherwise act hereunder except with respect to such actual controversies or other cases upon which a superior court would be required to act

under the Georgia declaratory judgment statutes as construed by the appellate courts of Georgia.

(2) Form of Petition. Each such petition shall be filed with the GCIC in writing and shall state:

(a) The name and post office address of the petitioner;

(b) The full text of the statute, rule or order upon which a ruling is requested;

(c) A paragraphed statement of all pertinent and existing facts necessary to a determination of the applicability of the quoted statute or rule;

(d) The petitioner's contention, if any, as to the aforesaid said applicability with citations of legal authorities, if any, which authorize, support or require a decision in accordance therewith;

(e) A statement setting forth in detail the petitioner's interest in the matter and why and how the petitioner is uncertain shall be verified under oath by, or in proper behalf of, the petitioner.

(3) Proceedings on petition. If the GCIC shall determine that a decision can be rendered on the face of the petition without further proceedings, the GCIC shall render a summary decision thereon. Otherwise, parties shall be notified and the matter shall be heard in an informal h aring.

(4) Informal request for interpretation and rulings. The provisions of this Rule shall not be construed to preclude:

(a) Any person from requesting the GCIC to interpret or otherwise rule upon the applicability of any pertinent statute or rule informally by personal appearance before the GCIC, by letter or by telegram to the GCIC or any officer or member thereof; or

(b) The GCIC from acting upon such request as and when it deems appropriate or from issuing any interpretive ruling without petition therefor.

(5) Any request presented in any manner other than in accordance with the provision of 140-1-.03 (2) and 140-1-.01 (3) above shall not be deemed to be filed as a Petition for Declaratory

Ruling but shall be deemed an informal request for interpretation or ruling and shall be acted on as such.
Authority Ga. L. 1964, p. 283 as amended. Administrative History. Original Rule was filed on February 25, 1976; effective March 16, 1976.

140-1-.04 Petition for Adoption of Rules.

(1) Form of petition. Each petition for adoption of rules made pursuant to the Georgia Administrative Procedure Act shall be filed with the Georgia Crime Information Center in writing and shall state:

(a) The name and post office address of the petitioner;

(b) The full text of the rule requested to be amended or repealed, or the full text of the rule desired to be promulgated;

(c) A paragraphed statement of the reason such rule should be amended, repealed or promulgated, including a statement of all pertinent existing facts as to petitioner's interest in the matter;

(d) Citations of legal authorities, if any, which authorize, support, or require the action requested by petitioner. The petition should be verified under oath by, or in proper behalf of, the petitioner.

(2) Proceedings on Petition. The GCIC Advisory Council shall consider the petition at its next regularly scheduled meeting. The Council may either decline to take the action requested or initiate rule-making or rule-changing proceedings in accordance with the Georgia Administrative Procedure Act. The Council shall notify the petitioner by Certified Mail of its decision and, if it declines to take the requested action, state the reasons for so declining.
Authority Ga. L. 1964, pp. 288 as amended. Administrative History. Original Rule was filed on February 25, 1976; effective March 16, 1976.

140-1-.05 Approval and Disciplinary Procedures.

(1) Persons and agencies shall exchange information with and receive services from GCIC only as approved by the Director. The Director shall not approve any service or exchange of information unless he finds that:

(a) The person or agency is permitted by the Act, these rules and federal laws and rules concerning privacy and security of criminal justice information systems to exchange such information or receive such service; and

(b) There is no significant danger that the person or agency will use the information or service in a manner which would violate the Act, these rules, or federal laws or rules concerning privacy and security of criminal justice information systems.

(2) Notification and resolutions of violations. Whenever it may appear to the Director that any law concerning criminal justice information or any rule, regulation or policy of the GCIC Advisory Council has been, is being, or is about to be violated, the Director shall immediately advise the person or head of the agency responsible for such violation of the existence and nature of such violation. If possible, the Director and the person or head of the agency shall agree on a mutually satisfactory solution. If such solution is agreed to, it shall be reduced to writing and signed by the Director and the agency head. A copy of any advisory of violation, any response of any person or agency thereto and any written agreements pursuant thereto shall be forwarded by the Director to the chairman of the GCIC Advisory Council. The GCIC Advisory Council shall, at its first meeting thereafter, review any such written agreement and approve, disapprove or require modification thereof. If any agreement entered into between the Director and a person or agency head is approved by the GCIC Advisory Council after review, it shall be a final disposition of the matter. If the GCIC Advisory Council requires modification and the person or agency head agrees to the agreement as modified, the agreement as modified shall be final disposition of the matter. If no agreement satisfactory to the GCIC Advisory Council and the agency can be reached, suspension proceedings may be initiated as hereinafter set forth.

(3) Suspension.

(a) If an agreement satisfactory to the Director and the person or head of the agency cannot be reached within ten days after the initial notification of violation, the Director may, in his discretion, cause all or any services rendered to such person or agency to be suspended. In such cases, notification shall be sent to the Chairman of the GCIC Advisory Council.

(4) Reinstatement. The Director may, upon petition of any person or the head of any agency which has had any service suspended or upon his own motion, reinstate any suspended service if he finds that this will not create a significant danger of future violations. At any time prior to a final decision by the Council, the Director may reinstate full or partial service to an agency

pending final decision if he finds that this will not create a significant danger of future violations.

(5) Contested Cases. Hearings and appeals with respect to any refusal by the Director to exchange information or provide services or any disciplinary measure taken by the Director or the GCIC Advisory Council pursuant to this rule shall be conducted pursuant to the Georgia Administrative Procedure Act and according to the procedures provided therein and the following procedures:

(a) Initiating a contested case. Any person or agency that is legally entitled to contest any refusal to exchange information or provide services or the imposition of any disciplinary measure under this rule may do so by filing with the Director a request for hearing which shall contain the following:

1. A title which indicates the nature of the proceedings.

2. The complete name and address of the party filing the request.

3. The name and address of all other interested parties.

4. A clear and concise statement of the facts upon which the contested case arises.

5. A prayer setting forth the relief sought.

6. If the party filing the request is represented by counsel, the name and address of counsel.

(b) Limitation on right to a hearing. A hearing to contest the imposition of a disciplinary measure will be granted as a matter of right only if requested in the form described in (a) above within 30 days of the imposition of the disciplinary action. A hearing upon a refusal to exchange information or provide services or upon a request for reinstatement of suspended services shall be granted as a matter of right, if requested in the form described in (a) above, at any time while service is partially or wholly suspended. A hearing upon a refusal to exchange information or provide services or upon a request for reinstatement of suspended services may be denied, however, upon a finding that the petition presents no substantial grounds which have not been presented at a previous hearing. The Council may in its discretion allow extensions of time and amendment of requests for good cause shown.

March 16, 1976

(c) Responses to request for hearing. The GCIC Advisory Council will respond to all requests for hearing with a notice scheduling a hearing or with an order denying the request for hearing and stating the reasons for the denial.

(d) Motions. Any application to the Director or the GCIC Advisory Council to enter any order or to take any action after the filing of a request for hearing shall be made by motion which, unless made during the hearing, shall be made in writing, shall state specifically the grounds therefor, and shall set forth the action or order sought. No motion shall be ruled upon except when the case in chief is ruled upon unless the moving party specifically requests a ruling at some other time and the agency deems such ruling appropriate.

(e) Hearings. Hearings in contested cases shall be conducted by three members of the GCIC Advisory Council. One of the members shall be the Chairman who shall preside. The other members shall be appointed by the Chairman. Following the hearing, the members hearing the case shall prepare and serve upon the Director and each interested party a proposal for decision. The Director and each interested party shall have 20 days following the service of a proposal for decision to file written exceptions and briefs. At the next meeting of the GCIC Advisory Council the Director and all interested parties shall have an opportunity to present oral argument to the Council. The Council shall then render a final agency decision.

(6) Notwithstanding anything in the foregoing, the Director or the GCIC Advisory Council may, if it appears that anyone has violated Section 7 of the Act, refer the matter to the appropriate prosecuting authority.

Authority 42 USC 3771, 28 CFR § 20.21, Ga. L. 1973, pp. 1310-1312.

140-1-.06 Contested Cases Governed by Express Statutory Provisions. Contested cases concerning an individuals right to have access and make corrections to his criminal record which arise under Georgia Laws 1973, pp. 1301, 1312 are governed by provisions contained therein rather than by the Administrative Procedure Act. Contested cases thereunder shall be conducted in accordance with the procedures provided in that section.

Authority Ga. L. 1973, pp. 1301, 1312-1314. Administrative History. Original Rule was filed on February 25, 1976; effective March 16, 1976.

RULES OF GEORGIA CRIME INFORMATION CENTER COUNCIL

CHAPTER 140-2 Amended PRACTICE AND PROCEDURE

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140-2-.01 Scope.

(1) These Rules shall apply to all criminal justice agencies within the State and to all other agencies or persons who are or become involved with the exchange of criminal justice information with the Georgia CJIS.

(2) Nothing in these Rules prevents a criminal justice agency from disclosing to the public factual information which is reasonably contemporaneous with the event to which the information relates. Such information would include:

(a) The status of an investigation.

(b) The apprehension, arrest, release or prosecution of an individual.

(3) A criminal justice agency is not prohibited from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed on a specific date, if the arrest record information or criminal record information disclosed is based on data contained in:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

(b) Original records of entry such as police blotters maintained by criminal justice agencies; compiled chronologically and required by law or long standing custom to be made public if such records are organized on a chronological basis.

(c) Court records of public judicial proceedings compiled chronologically.

(d) Published court opinions or public judicial proceedings.

(e) Records of traffic offenses maintained by the Georgia Department of Public Safety or departments of transportation, motor vehicles or the equivalent thereof for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operator's licenses.

(f) Announcements of executive clemency.

(4) Nothing in these Rules shall close any record that is now or hereafter by law made public.

(5) Nothing in these Rules shall mandate exchange of criminal justice information except where specifically required by these Rules.

Authority 42 USC 3771, 28 CFR § 20.21, Ga. L. 1973, pp. 1301, 1306, 1307. Administrative History. Original Rule was filed on February 25, 1976; effective March 16, 1976.

110-2-.02 Data Security Requirements for Criminal Justice Information.

(1) Information in the following classes shall be handled accordingly:

(a) The following data security measures shall be observed in the storage and use of secret information:

1. When not in use it shall be stored in locking, fire resistant vaults or safes. Duplicate computer files and program tapes should be similarly secured in a separate and distinct physical location. The purpose should be to ensure the security of the auxiliary information if the primary tapes and files are destroyed.

2. Areas in which the information is processed and handled shall be out of public view and restricted to authorized personnel in the performance of their official duties.

3. It shall be under the absolute control of criminal justice agencies at all times. It shall be controlled specifically by the agency director or head or his designee.

4. A log or other record should be kept in a sign out sign in basis when the information is removed or returned to the vault.

(b) The following data security measures shall be observed in the storage and use of criminal history record information.

1. When not in use it shall be stored in a locking cabinet.

2. Areas in which the information is processed and handled should be out of the public view and restricted to authorized personnel in the performance of their official duties.

3. It shall be under the absolute control of criminal justice agencies at all times except where exempted by these Rules.

(c) The following data security measures shall be observed in the storage and use of sensitive information:

1. When not in use, it should be stored in a controlled access area.

2. Areas in which the information is processed and handled should be out of the public view.

(d) Restricted information should be used and stored in a controlled access area.

(2) Any secret information, criminal history record information, sensitive information or restricted information is a "Secret of State" which is required by the policy of the State, the interest of the community and the right of privacy of the citizens of this State to be confidential. Such information shall not be divulged except as permitted by the Act and by these Rules.

(3) Criminal justice agencies shall disseminate criminal justice information only to those agencies and persons who have a need for such information in order to perform duties in the administration of criminal justice or as otherwise provided by statute, executive order or these Rules.

Authority 28 CFR § 20.21, Ga. L. 1973, pp. 1307, 1310, 1311. Administrative History. Original Rule was filed on February 25, 1976; effective March 16, 1976.

March 16, 1976

140-2-.03. Completeness and Accuracy of Criminal History Record Information.

(1) Law enforcement, judicial and correctional authorities shall forward all dispositions on the form and by the procedures established by the GCIC.

(2) The GCIC shall advise the proper authorities of the necessary forms and procedures so that they may fulfill completely their responsibilities.

(3) The dispositions shall be forwarded to the GCIC as soon as practicable and in each case not to exceed 80 days after disposition has occurred. The disposition shall become a part of the criminal history record within ten (10) days following its receipt.

(4) Pursuant to Section 140-2-.06 of these Rules, criminal history logs shall be maintained to provide the mechanism to correct any inaccurate information.

(5) Each agency which collects, stores or disseminates criminal history record information shall establish systematic audit trails to minimize the possibility of recording and storing inaccurate information.

(6) Annual audits shall be instituted pursuant to Section 140-2-.07 of these Rules.

Authority 42 USC 3771, 28 CFR § 20.21, Ga. L. 1973, pp. 1305, 1306, 1307, 1308, 1309. Administrative History. Original Rule was filed on February 25, 1976; effective March 16, 1976.

140-2-.04 Criminal Justice Information Exchange and Dissemination. Amended.

(1) Dissemination and exchange of criminal justice information by the GCIC.

(a) Any agency or person who desires to exchange criminal justice information with the GCIC controlled CJIS shall execute a standard user agreement.

(b) The GCIC may exchange criminal justice information with bona-fide criminal justice agencies for purposes of the administration of criminal justice and criminal justice employment based on the following criteria:

1. The Director of the GCIC shall determine bona-fide status.

2. The GCIC shall exchange any information in the files of the GCIC which may aid these agencies in the performance of their duties.

3. The head of the agency shall execute a "Standard Criminal Justice Agreement—Intrastate".

(i) Every criminal justice agency who exchanges information with the GCIC shall execute Part "A" of the "Standard Criminal Justice Agreement—Intrastate".

(ii) Every on-line user who exchanges information with the GCIC shall execute Parts "A" and "B" of the "Standard Criminal Justice User Agreement—Intrastate".

(iii) Those criminal justice agencies who wish to participate on a computer to computer basis on the GCIC/CJIS automated system may do so provided that the requirements established in the GCIC Computer to Computer Interface Standards Manual (GCIC 071673—CCIS—001) have been met.

(iv) The Standard Criminal Justice User Agreement—Intrastate shall read as follows:

GEORGIA CRIME INFORMATION CENTER
CRIMINAL JUSTICE INFORMATION SYSTEM

STANDARD USERS AGREEMENT (INTRASTATE)
PART "A"

PART "A" SECTION 1

This agreement is entered into this.....day of....., 19....., by and between the Georgia Crime Information Center, State Administrator of the Georgia Criminal Justice Information System, hereinafter referred to as GCIC, and

AGENCY.....

ADDRESS.....

.....

a criminal justice agency, hereinafter referred to as USER AGENCY.

March 16, 1976

This agreement provides for the duties and responsibilities of both GCIC and the User Agency.

GCIC will operate and maintain a criminal justice information system, which will support the collection, storage, retrieval and dissemination of all crime and offender data, both intrastate and interstate. GCIC will make available, upon request, to all bona-fide local and state criminal justice agencies, any information, including criminal history, in the files of GCIC which will aid these agencies in the performance of their official duties; provided that the dissemination of such information would not be a violation of State or Federal laws and regulations restricting its use for reasons of privacy and security.

User Agency agrees to abide by all laws of the United States, the State of Georgia and the rules and regulations of the responsible administrative agencies concerning collection, storage, retrieval and dissemination of criminal justice information.

Nothing in this agreement shall be construed so as to give authority to any person, agency or corporation or other legal entity to invade the privacy of any citizen, as defined by State and Federal law.

User Agency hereby acknowledges understanding of and shall advise all its employees of the penalties relating to illegal actions with regard to criminal justice information.

The "Georgia Crime Information Center Act"; Georgia Laws 1973, p. 1301, provides that . . . .

Section 7. Any person who willfully requests, obtains or seeks to obtain criminal offender record information under false pretenses, or who willfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with this Act, or any member, officer, employee or agency of GCIC, the GCIC Advisory Council or any participating agency who willfully falsifies criminal offender record information, or any records relating thereto shall for each such offense be fined not more than five thousand dollars, or imprisoned in the State penitentiary not more than two years, or both. Any person who knowingly, but without criminal purpose, communicates or seeks to communicate criminal offender record information except in accordance with this Act shall for each such offense be fined not more than one hundred dollars, or imprisoned not more than ten days, or both.

March 16, 1976

User Agency agrees to indemnify and save harmless GCIC and its officials and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liability to others, including but not limited to any liability for damages by reason of or arising out of any false arrest or imprisonment, or any cause of action whatsoever, or against any loss, cost, expense, and damage, resulting therefrom, arising out of or involving any action or inaction on the part of the User Agency in the exercise or enjoyment of this agreement.

Part "B" shall be appended to and made a part of this agreement if the USER AGENCY is an on-line subscriber to the GCIC electronic data processing criminal justice information system.

PART "B"

GCIC agrees to maintain, operate and manage an electronic data processing criminal justice information system, on a 24 hour, 7 day per week basis. GCIC further agrees to serve as the State control terminal to facilitate the exchange of Information between the USER AGENCY and other user agencies, National Crime Information Center (NCIC), Department of Public Safety, Department of Revenue and the National Law Enforcement Telecommunications System (NLETS). GCIC reserves the right to selectively restrict the type and scope of data to which the USER AGENCY may have access.

The type and kind of electronic equipment at the User Agency terminal(s) shall be compatible with GCIC equipment, this determination to be made by GCIC or its authorized designee. Data sets and voice grade telephone wire between and connecting the terminal station(s) and the GCIC Command Center shall be arranged for by GCIC or its designee. GCIC reserves the right to approve User Agency's equipment location, security provisions, computer interface configuration, and terminal usage volume.

User Agency shall be responsible for all costs associated with the purchase or lease of equipment, equipment maintenance, terminal operator personnel provision, supplies and as otherwise shall be incurred with the exceptions hereby stipulated. GCIC shall be responsible for the costs associated with installation and connection of terminals with the GCIC Command Center. GCIC further assumes responsibility for training of terminal operators at no charge to the User Agency at times and locations within the State to be designated by GCIC. It is understood by and between the parties hereto that the obligation of GCIC to incur costs shall be conditional

upon sufficient funds being budgeted and available to GCIC and no liability shall be incurred by GCIC by virtue of this agreement beyond monies available to it for the purposes of fulfilling this agreement.

It shall be the responsibility of User Agency to provide for conversion and entry of data into GCIC through the use of codes, procedures, and techniques as developed and provided by GCIC. GCIC shall render assistance to the User Agency in order to provide for timely, efficient and accurate implementation of terminal operations.

In keeping with the purpose of GCIC to provide assistance to all criminal justice agencies in the State, the User Agency agrees to provide to those criminal justice agencies not equipped with a GCIC terminal such assistance as may be requested in the furtherance of criminal justice information processing and communications through record inquiry, message transmittals, or record entries in keeping with GCIC standards. When furnishing such assistance to other criminal justice agencies the User Agency agrees to limit access to information, including criminal history, furnished by GCIC, to employees of criminal justice agencies which have executed a Standard User Agreement—Intrastate with GCIC.

Requests from non-criminal justice agencies and criminal justice agencies that have not signed a "Part A" should be referred to GCIC.

This concludes Part "B"

* * * * * * * *

PART "A" SECTION 2

Either GCIC or the USER AGENCY may, upon thirty (30) days notice to the other agency in writing, cancel this agreement in whole or in part.

GCIC reserves the right to terminate this agreement with or without notice upon determining that the User Agency has violated any law, rule or regulation concerning criminal justice information or violated the terms of this agreement; such termination shall be pursuant to the laws, rules and regulations provided therefor.

IN WITNESS WHEREOF: the parties hereto have caused,

..... USER AGENCY	..... GEORGIA CRIME INFORMATION CENTER	PART "A" ONLY
..... USER AGENCY	..... GEORGIA CRIME INFORMATION CENTER	PARTS "A" AND "B"

(Strike one and initial the other)

to be executed by the proper officials.

USER AGENCY	GEORGIA CRIME INFORMATION CENTER
BY	BY .....
TITLE	TITLE .....
DATE	DATE .....
ATTEST	ATTEST .....

CJUA-1-REV-10-75

(c) The GCIC may exchange criminal justice information with the Governor, when acting in his capacity as the Chief Law Enforcement Officer of the State.

(d) The GCIC may exchange criminal justice information with the Attorney General when performing activities relating to the apprehension or prosecution of criminal offenders.

(e) All requests received by the GCIC for criminal justice information from the news media and other non-public agencies and persons shall be referred to the Director of the GCIC. No individual at GCIC is authorized to disclose any information whatsoever to non-public agencies without approval of the Director.

(f) The Georgia Crime Information Center may disseminate certain criminal history record information to any other agency of this State, political sub-division of this State or any federal agency upon determination by the GCIC Council that such informa-

tion is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders.

1. The criminal history record information disseminated shall be limited to records of adjudications of guilt, dispositions and arrest records unsupported by dispositions less than one year old.

2. Each agency shall set forth in writing its need for and use of criminal history record information received. The agency shall demonstrate how its use of criminal history record information is related to the prevention or detection of crime or the apprehension of criminal offenders.

3. Each agency who desires to be authorized to receive criminal history record information from the GCIC by the GCIC Council shall present their request in writing to the Director of the GCIC. This request shall be received at least thirty days prior to a Council meeting for consideration by that session and shall be accompanied by the recommendation from the Director of the GCIC.

4. The GCIC Council shall consider each agency's request on an individual basis and shall reply within 30 days after the Council's meeting in writing to the requesting agency as to the Council's decision. The Secretary of the Council shall be responsible for notifying the agency of the decision.

5. Prior to the initial dissemination of any criminal history record information the agency shall execute the GCIC standard user agreement with non-criminal justice agencies pursuant to Rule 140-2-.04 (2) (c) 4.

6. To establish positive identification legible fingerprints shall be required to accompany the agency's request.

(i) For each applicant one complete set of legible, inked fingerprints shall be required.

(ii) All fingerprints shall be taken on the Standard FBI Applicant Card (FBI Form Number FD 258) or a comparable card approved by the GCIC. All required identifying data shall be completed.

(iii) All applicant cards shall be directed to the Automated Identification and Criminal History Section GCIC, P. O. Box 1456, Atlanta, Georgia 30301.

July 1, 1976 (Revised)

(iv) The GCIC shall not be responsible for supplying the applicant forms or for taking the fingerprint impressions.

7. All criminal history record information disseminated pursuant to this sub-paragraph shall be subject to the Data Security Requirements contained in Rule 140-2-.02.

8. All agencies receiving criminal history record information pursuant to this sub-paragraph shall be subject to the annual audit pursuant to Rule 140-2-.07.

(g) The Georgia Crime Information Center may disseminate certain criminal history record information to private persons, businesses and commercial establishments.

1. Such dissemination shall occur only after the GCIC has fulfilled its duties and obligations to other criminal justice agencies as required by law and the criminal justice agencies of the Act.

2. The criminal history record information disseminated shall be exclusively limited, without exception, to records of adjudications of guilt including nolo contendere. An adjudication of guilt, including nolo contendere, shall mean a judgment or sentence that determines the defendant is guilty of a violation of a criminal statute. It shall include the notation of arrest and conviction, and if known, the sentence or fine imposed, and all available probation, parole and release information pertinent to the charge.

3. Any private person, business or commercial establishment making a decision adversely affecting an individual based on any information received from the GCIC or its agents pursuant to this subparagraph shall notify the individual of all information received from GCIC.

(i) This information shall include that a record of adjudications of guilt including nolo contendere was obtained from GCIC, the contents of the record and the effect such record had upon the decision.

(ii) A copy of this notification shall be forwarded to the GCIC for the purposes of audit.

4. Prior to the initial dissemination of any record of adjudication of guilt including nolo contendere each private person, business, commercial establishment and designated representatives, if any,

shall sign an awareness statement, including a hold harmless clause, acknowledging the confidentiality of the record received.

5. Each private person, business or commercial establishment specifically authorized to receive records of adjudications of guilt including nolo contendere, shall be assigned a non-transferable code number by which to identify the request as legitimate.

6. The term designated representative as used in this subparagraph (g) shall mean persons designated in writing by the private persons, business or commercial establishment seeking receipt of records of adjudications of guilt including nolo contendere which written designation shall be in form and content acceptable to the Director of GCIC.

7. All records of adjudication of guilt including nolo contendere received by private persons, businesses and commercial establishments or their designated representatives from the GCIC pursuant to this paragraph shall be subject to the Data Security Requirements of Rule 140-2-.02.

8. All private persons, businesses and commercial establishments or their designated representatives receiving information pursuant to this paragraph shall be subject to an annual audit contained in Rule 140-2-.07.

9. All private persons, businesses and commercial establishments or their designated representatives who receive information from the GCIC pursuant to this paragraph shall maintain a log noting the individual whose record they received, the authority by which they received such information and any notification to the individual as required by subparagraph (g) 3. above.

(i) This log shall be separate, self contained document in the form of a chronological listing.

(ii) This log shall be made available in list format upon request and shall be accessible for audit.

(iii) This log shall be maintained for a period of four (4) years.

10. All private persons, businesses or commercial establishments or their designated representatives who receive information pursuant to this paragraph shall be subject to completion of a yearly certificate of compliance on the form supplied by the GCIC.

June 30, 1977 (Revised)

II. Records of adjudications of guilt including nolo contendere may be available to private persons, businesses and commercial establishments or their designated representatives for the purposes of making employment and job assignment decisions.

(i) Records may be available only to provide employers on those employees or prospective employees whose job duties include:

(I) Working in or near private dwellings without immediate supervision.

(II) Custody or control over or access to cash or valuable items.

(III) Knowledge of or access to secret processes, trade secrets or other confidential information.

(IV) Ensuring the security or safety of other employees, customers, or property of the employer.

(ii) There shall be a charge of $6.25 for each dissemination for employment purposes. This amount approximates the cost to the State for processing the request. The GCIC Council maintains the privilege to change this figure without formally amending these Rules as the cost of processing fluctuates. Requests without a check or money order payable to the Georgia Bureau of Investigation in the proper amount may be returned.

(iii) Records of adjudications of guilt including nolo contendere shall be disseminated by designated representatives only to the appropriate personnel of the private person, business or commercial establishment.

(iv) Without exception fingerprints shall be required to accompany every dissemination pursuant to this sub-paragraph.

(I) For each applicant one complete set of legible, inked fingerprint impressions shall be required which may be maintained for audit purposes by GCIC.

(II) All fingerprints shall be taken on the Standard FBI Applicant Fingerprint Card (FBI Form Number FD 258) or comparable card approved by GCIC. It shall contain all the required identifying data.

(III) All applicant cards shall be directed to the Automated Identification and Criminal History Section, GCIC, P. O. Box 1456, Atlanta, Georgia 30301.

(IV) The GCIC shall not be responsible for supplying the applicant forms or for taking the fingerprint impressions.

12. The GCIC may make available to businesses, commercial establishments or their designated representatives records of adjudications of guilt including nolo contendere of persons apprehended for or suspected of a specific criminal act or acts of which the business, or commercial establishment or an employee of such establishment in the course of his employment is a victim.

(i) Identification shall be made by fingerprint comparison except as hereinafter provided.

(I) For each suspect one complete set of legible inked fingerprint impressions shall be required which may be maintained for audit purposes.

(II) All fingerprints shall be taken on the Standard FBI Arrest Fingerprint Card (FBI Form Number FD 249) and shall contain all required identifying data.

(III) All applicant cards shall be directed to the Automated Identification and Criminal History Section, GCIC, P. O. Box 1456, Atlanta, Georgia 30301.

(IV) The GCIC shall not be responsible for supplying the forms or for taking the fingerprint impressions.

(ii) In those cases when fingerprints are not available or time prohibits the use of fingerprints, a list of possible subjects must be returned. Three possible subjects shall routinely satisfy the request unless more or fewer than three are requested or fewer than three are available.

(I) The business, commercial establishment or their designated representatives shall demonstrate a good faith effort to supply fingerprints and shall supply a letter stating reasons for noncompliance.

(II) The business, commercial establishment or their designated representatives if available shall furnish the GCIC the suspect's name, sex, race and date of birth.

(III) When available, other information shall accompany the request such as place of birth, scars, marks, tatoos, hair color, eye color, State Identification Number, FBI Number, military service serial number, driver's license number, local law enforcement numbers, aliases and license tag number.

(IV) The individual's Social Security Number may be used as an identification tool if the suspect is advised that the use of his Social Security Number is optional and will be used in a computerized file.

(V) For each subject's record disseminated the business or commercial establishment shall be charged $6.25 (i.e. for a list of 3 possibles the cost would be $18.75). This amount approximates the cost of the State for processing the request. The GCIC Council maintains the privilege to change this figure without formally amending these Rules as the cost of processing fluctuates.

(iii) All requests shall be in writing from an authorized person which includes the identifying code number.

(iv) Records of adjudications of guilt including nolo contendere shall be disseminated by designated representatives only to the appropriate personnel of the business or commercial establishment.

(2) Dissemination of criminal justice information by criminal justice agencies.

(a) Except as to dissemination made under sub-paragraph (g) of this paragraph (2) all criminal justice agencies shall query the GCIC prior to any dissemination to ensure that the criminal history record information is the most current available.

(b) Criminal justice agencies may exchange criminal justice information with bona-fide criminal justice agencies for the purposes of the administration of criminal justice and criminal justice employment. Any question concerning an agency's status as a bona-fide criminal justice agency shall be resolved by the Director of the GCIC.

(c) Criminal justice agencies may exchange criminal history record information with non-criminal justice agencies or persons which require criminal justice information to implement a statute or executive order that is expressly based on such conduct.

1. The GCIC shall maintain a list of all agencies and persons authorized by statute or executive order to receive such disseminations. This list shall be available upon request to the GCIC.

2. The Director of the GCIC shall determine whether an agency or person qualifies in this category.

3. Criminal history record information concerning an arrest shall not be disseminated if an interval of one year has elapsed from the date of that arrest and no disposition of the charge has been recorded and no indictment or accusation has been returned.

4. The following user agreement shall be executed by non-criminal justice agencies and persons before any criminal history record information is disseminated:

GEORGIA CRIME INFORMATION CENTER

STANDARD USER AGREEMENT
WITH NON-CRIMINAL JUSTICE AGENCIES

This agreement is entered into this ..... day of .....,

19....., by and between the Georgia Crime Information Center,

CONTINUED ON PAGE 21

State Administrator of the Georgia Criminal Justice Information System, hereinafter referred to as GCIC and

AGENCY

ADDRESS

hereinafter referred to as "User Agency".

This agreement emanates pursuant to Georgia Laws

or Executive Order which authorizes User Agency to receive certain criminal history record information on specified individuals. Implementation of the above law or executive order specifically allows the user agency access to information that expressly refers to criminal conduct and contains requirements and or exclusions expressly based on such conduct.

Use of criminal history record information shall be strictly limited to the lawful purposes for which it was given. Under no circumstances shall it be disseminated further. Nothing in this agreement shall be construed so as to give authority to any person, agency or corporation, or other legal entity to invade the privacy of any citizen, as defined by State and Federal law.

User Agency hereby agrees to abide by the federal laws and regulations pertaining to security and privacy of CJIS and by the Rules of the Georgia Crime Information Center Advisory Council filed with the Office of the Secretary of State. Receipt of a copy of these Rules is herewith acknowledged. User Agency further agrees to abide by the Georgia Crime Information Center Act, Ga. Laws, 1973, pp. 1301-1315 and understands the penalties relating to illegal actions with regard to criminal justice information. The Georgia Crime Information Center Act, Ga. Laws 1973 p. 1314 provides that . . .

> Section 7. Any person who willfully requests, obtains or seeks to obtain criminal offender record information under false pretenses, or who willfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with this Act, or any member, officer, employee or agent of GCIC, the GCIC Advisory Council or any participating agency who willfully falsifies criminal offender record information, or any records relating thereto, shall for each such offense be fined not more than five thousand

dollars, or imprisoned in the State penitentiary not more than two years, or both. Any person who knowingly, but without criminal purpose, communicates or seeks to communicate criminal offender record information except in accordance with this Act shall for each such offense be fined no more than one hundred dollars, or imprisoned not more than ten days, or both.

The User Agency assumes full responsibility for all criminal history record information received from the GCIC under the terms of this agreement.

User Agency agrees to indemnify and save harmless GCIC and its officials and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liability to others, including but not limited to any liability for damages by reason of or arising out of any false arrest or imprisonment, or any cause of action whatsoever, or against any loss, cost, expense, and damage, resulting therefrom, arising out of or involving any action or inaction on the part of the User Agency in the exercise or enjoyment of this agreement.

Either the GCIC or the User Agency may cancel this agreement upon thirty (30) days written notice to the other agency.

The GCIC reserves the right to terminate this agreement with or without notice upon determining that the User Agency has violated any law, rule or regulation concerning criminal history record information or violated the terms of this agreement. Such termination shall be pursuant to all laws, rules and regulations provided therefore.

IN WITNESS WHEREOF: The parties hereto have caused this agreement to be executed by the proper officials:

USER AGENCY	GEORGIA CRIME INFORMATION CENTER
BY	BY .....
TITLE	TITLE .....
DATE	DATE .....
ATTEST	ATTEST .....

(d) Criminal justice agencies may allow access to criminal history record information by individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide services required for the development of systems related to the administration of criminal justice pursuant to that agreement. The agreement shall authorize specific access to data, limit the use of data to purposes for which given and ensure the security and confidentiality of the data consistent with these Rules and federal regulations on security and privacy.

(e) Criminal justice agencies may disseminate criminal history record information to agencies of State or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for specific classified positions requiring security clearance access to classified information. The Director of the GCIC shall determine whether an individual or agency qualifies under this category. Criminal history record information which is disseminated pursuant to this subparagraph (e) shall be used only in determining employment suitability or eligibility for specific classified positions requiring security clearances allowing access to classified information and for no other purpose.

(f) Criminal justice agencies may disseminate criminal justice information to individuals and agencies for the express purpose of research, evaluative or statistical activities pursuant to a standard user's agreement.

1. The Director of the GCIC shall determine which individuals and agencies shall qualify under this category.

2. No recipient of this information shall use or reveal any research or statistical information furnished under this Rule by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this Rule. Copies of such information shall be immune from legal process, and shall not, without the consent of the person or agency furnishing such information be admitted as evidence used for any purpose in any action, suit, or other judicial or administrative proceedings.

3. The following user agreement shall be executed:

GEORGIA CRIME INFORMATION CENTER
STANDARD USER AGREEMENT FOR DISSEMINATION
OF CRIMINAL JUSTICE INFORMATION FOR RESEARCH

This agreement is entered into this ... ... day of ...., 19 . by and between the Georgia Crime Information Center, State Administrator of the Georgia Criminal Justice Information System, hereinafter referred to as GCIC and:

AGENCY .....

ADDRESS .....

.....

hereinafter referred to as "User Agency".

This agreement establishes the conditions under which the GCIC may disseminate criminal justice information to the User Agency for the express purpose of research, evaluative or statistical activities.

The User Agency shall append to this agreement, a written statement explaining explicitly the User Agency's need to know such information, the intent of any analyses and the dissemination of such analyses.

Use of criminal justice information shall be strictly limited to the lawful purposes for which it was given. Under no circumstances shall it be disseminated further. Nothing in this agreement shall be construed so as to give authority to any person, agency, or corporation, or other legal entity to invade the privacy of any citizen, as defined by State and Federal law.

No User Agency shall use or reveal any research or statistical information furnished through this agreement by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this agreement. Information obtained through this agreement shall be immune from legal process, and shall not, without the consent of the person or agency furnishing such information be admitted as evidence used for any purpose in any action, suit, or other judicial or administrative proceedings. User Agency shall notify GCIC and the agency from which the information was obtained of any attempt of

any other person to obtain criminal justice information from User Agency by legal process or otherwise.

User Agency hereby agrees to abide by the federal laws and regulations pertaining to security and privacy of the Criminal Justice Information Systems and by the Rules of the Georgia Crime Information Center Council filed with the Office of the Secretary of State. Receipt of a copy of these Rules is herewith acknowledged. User Agency further agrees to abide by the Georgia Crime Information Center Act, Ga. Laws 1973, pp. 1301-1315 and understands the penalties relating to illegal actions with regard to criminal justice information. The Georgia Crime Information Center Act, Ga. Laws 1973, p. 1314 provides that . . .

> Section 7. (a) Any person who knowingly requests, obtains or attempts to obtain criminal history record information under false pretenses, or who knowingly communicates or attempts to communicate criminal history record information to any agency or person except in accordance with this Act, or any member, officer, employee or agent of GCIC, the GCIC Council or any participating agency who knowingly falsifies criminal history record information, or any records relating thereto, shall for each such offense be fined not more than $5,000, or imprisoned for not more than two years, or both. Any person who communicates or attempts to communicate criminal history record information in a negligent manner not in accordance with this Act shall for each such offense be fined not more than $100, or imprisoned not more than ten days, or both.
>
> (b) Any person who knowingly discloses or attempts to disclose the techniques or methods employed to insure the security and privacy of information or data contained in criminal justice information systems except in accordance with this Act shall for each such offense be fined not more than $5,000 or imprisoned not more than two years, or both. Any person who discloses or attempts to disclose such information in a manner not permitted by this Act shall for each such offense be fined not more than $100, or imprisoned not more than ten days, or both.

The User Agency assumes full responsibility for all criminal justice information received from the GCIC under the terms of this agreement.

User Agency agrees to indemnify and save harmless GCIC and its officials and employees from and against any and all claims, demands, actions, suits and proceedings by others, against all liabil-

ity to others, including but not limited to any liability for damages by reason of or arising out of any false arrest or imprisonment, or any cause of action whatsoever, or against any loss, cost, expense, and damage, resulting therefrom, arising out of or involving any action or inaction on the part of the User Agency in the exercise or enjoyment of this agreement.

Either the GCIC or the User Agency may cancel this agreement upon thirty (30) days written notice to the other agency.

The GCIC reserves the right to terminate this agreement with or without notice upon determining that the User Agency has violated any law, rule or regulation concerning sensitive criminal justice information or violated the terms of this agreement. Such termination shall be pursuant to all laws, rules and regulations provided therefor.

IN WITNESS WHEREOF: The parties hereto have caused this agreement to be executed by the proper officials.

USER AGENCY	GEORGIA CRIME INFORMATION CENTER
BY	BY .....
TITLE	TITLE .....
DATE	DATE .....
ATTEST	ATTEST .....

(g) Criminal justice agencies may make available to private persons, businesses and commercial establishments or their designated representatives certain criminal history record information.

1. Criminal history record information shall be limited to adjudications of guilt including nolo contendere.

2. Records of adjudications of guilt including nolo contendere may be available to private persons, businesses and commercial establishments or their designated representatives for the purposes of making employment and job assignment decisions.

(i) Records may be available only to private employers on those employees or prospective employees whose job duties include:

(I) Working in or near private dwellings without immediate supervision.

(II) Custody or control over or access to cash or valuable items.

(III) Knowledge of or access to secret processes, trade secrets or other confidential information.

(IV) Ensuring the security or safety of other employees, customers or property of the employer.

3. Local criminal justice agencies may make available to businesses or commercial establishments or their designated representatives records of adjudications of guilt including nolo contendere of persons apprehended for or suspected of a specific criminal act or acts of which the business, commercial establishment or an employee of such establishment in the course of his employment is a victim.

4. Criminal justice agencies may charge the requestor a fee for processing the request.

5. Criminal justice agencies may establish procedures for processing these requests at the local level.

6. Where local criminal justice agencies inquire with GCIC the originating agency code (OAC) if available and the purpose of the request shall be included with the request.

(3) Limitation on exchange and dissemination of criminal justice information.

(a) No criminal justice information shall be disseminated except as provided by these Rules.

(b) Use of criminal history record information disseminated to non-criminal justice agencies under these Rules and federal regulations shall be limited to the purposes for which it was given and may not be disseminated further.

(c) No agency or individual shall confirm the existence or nonexistence of criminal history record information or employment or licensing checks except as provided by paragraphs (1) (b), (2) (c), (2) (c), of this Rule.

(d) Nothing in this Rule shall mandate dissemination of criminal history record information to any agency or individual.

(e) Nothing in these Rules shall prohibit the dissemination of criminal history record information for the purposes of international travel, such as issuing visas and granting citizenship. The applicant shall attest the criminal history record information received is for these purposes only.

140-2-.05 Security and Privacy of Criminal Justice Information. Criminal justice information, regardless of the source of such information shall not be altered, obtained, copied, destroyed, delayed, misplaced, misfiled, given, bought, or sold when the intent of such action is to obstruct justice or illegally invade the privacy of any person, agency, corporation or other legal entity.

Authority: 42 USC 3771, 28 CFR § 20.21, Ga. L. 1973, pp. 1312, 1314. Administrative History. Original Rule was filed on February 25, 1976; effective March 16, 1976.

140-2-.06 Criminal History Logs.

(1) Criminal History Logs shall be maintained by those agencies which disseminate criminal history record information within the scope of this Chapter.

(2) The log shall contain information concerning the dissemination of criminal history record information within the Scope of this Chapter.

(3) The logs shall provide the mechanism to correct any inaccurate information.

(4) Upon finding inaccurate information of a material nature, it is the duty of the criminal justice agency of discovery to notify all criminal justice agencies or persons known to have received such information.

(5) The following minimum information concerning the dissemination of criminal history record information as defined within the Scope of this Chapter shall be maintained in the logs in order to provide an audit trail.

(a) Date disseminated.

(b) Individual criminal history including:

1. Name.

2. All applicable local, state and federal identifying numbers.

(c) Name of officer of dissemination.

(d) Name of agency of receipt.

(e) Name of officer of receipt.

(6) There shall be attached to each appropriate individual criminal history record case file the same information contained in the log.

(7) Computer system log.

(a) Computer system logging requirements are the same as any other logging requirements with the exception that the log may be in the form of electromagnetic storage medium.

(b) This log information must be in a form that can be reproduced as a printed list showing time, date, name and identifying number of the individual, and the recipient agency for any individual criminal history file.

(c) The printed listing must be available within ten (10) days from the date of request.

(8) All logs shall be made available for inspection by criminal justice agencies upon request from the GCIC Security Officer.

Authority 42 USC 3771, 28 C.F.R. § 20.21, Ga. L. 1973, pp. 1301, 1305, 1306, Ga. L. 1972, p. 1267 as amended. **Administrative History.** Original Rule was filed on February 25, 1976, effective March 16, 1976.

140-2-.07 Audit Procedures.

(1) The GCIC shall institute audit procedures to insure that criminal history record information is accurate.

(2) The Director of the GCIC shall appoint a security officer who will audit and examine criminal justice agencies to insure compliance with these Rules.

(a) The GCIC Security Officer and members of the GCIC field staff shall visit on an unannounced random basis all criminal justice agencies who have signed user agreements with GCIC.

(b) A representative sample of agencies shall be visited annually.

(c) The GCIC Security Officer may or may not announce his presence when auditing or examining a criminal justice agency.

(d) The GCIC Security Officer shall report the results of examinations and audits to the Director of GCIC.

(3) The following shall be made available to the GCIC ~~Security~~ Officer and members of the GCIC field staff for the purpose of

audit, inspection and examinations to determine compliance with these Rules.

(a) Physical facility.

(b) Personnel records.

(c) Criminal history record files.

(d) Criminal history record information handling procedures.

(e) Criminal history logs.

(f) Computer system hardware.

(g) Computer system software.

(h) Computer system documentation.

Authority 42 USC 3771, 28 CFR § 20.21, Ga. L. 1973, pp. 1301, 1302, 1305, 1306, 1307, 1309. Administrative History. Original Rule was filed on February 25, 1976; effective March 16, 1976.

140-2-.08 Physical Security Standards for Criminal Justice Agencies.

(1) Facilities that house criminal justice agencies should have a secure area, out of public view, with controlled or limited access, in which criminal justice information is handled.

(2) Criminal justice agencies with on-line computer terminals should place those terminals in the secure area defined in Paragraph (1) of this Rule.

(3) Criminal justice agencies shall institute reasonable procedures to protect any central depository of criminal history record information from unauthorized access, theft, sabotage, fire, wind, flood, power failure and any other natural or man-made disasters.

(4) Criminal justice agencies who operate CJIS satellite computer systems should consider the following:

(a) These agencies should provide heavy duty non-exposed walls; fire, smoke and intrusion detectors; emergency power systems, and electronic or manually guarded access.

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(b) A fire resistant vault or safe should be off site of storage or auxiliary programming software and files.

Authority: 28 CFR § 20.21, Ga. L., 1973, pp 1301, 1306, 1307. Administrative History. Original Rule was filed on February 25, 1976; effective March 16, 1976.

140-2-.09 Personnel Security Standards for Criminal Justice Agencies.

(1) Applicants for employment and those presently employed by criminal justice agencies who handle criminal justice information within the scope of this Chapter, shall consent to an investigation of their good moral character, reputation and honesty. All applicants shall submit to a fingerprint identification check.

(2) The investigation should produce sufficient information for the appropriate official to determine the applicant's suitability and fitness for employment.

(3) Giving false information shall disqualify an applicant and be cause for employee dismissal.

(4) The State Security Questionnaire shall be used for background investigations and shall be a permanent part of the personnel file.

(5) All personnel directly associated with the maintenance or dissemination of criminal history data shall attend a training seminar. The purpose of this seminar shall be to inform employees of federal and state regulations and laws regarding the security and privacy of criminal justice data.

(6) Criminal justice agencies shall establish clearance categories for all criminal justice personnel in accordance with the information classes defined in Section 140-1-.02 (2) (b) of these Rules. All clearance categories shall be authorized in strict accordance with need to know and right to know principles. Although these clearance categories can be accepted by other criminal justice agencies; the agency granting the clearance shall be responsible for the integrity of that clearance.

(7) A criminal justice agency shall have the power to determine legitimate security purposes for which personnel can be permitted to work in a defined area where criminal justice information is stored, collected or disseminated.

(8) A criminal justice agency shall select and supervise all personnel authorized to have direct access to criminal history record information and restricted information.

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(9) Each criminal justice agency shall keep and make available upon request to the GCIC a current list of employees cleared to handle criminal history records or secret information.

(10) All employees of criminal justice agencies who handle criminal justice information shall be expected to sign an Awareness Statement which shall read as follows:

140-2-.10 Procedures Whereby An Individual May Access His Criminal History Record File.

(1) General procedures for access to the GCIC criminal history record file.

(a) All applications must be accompanied by a current set of that individual's fingerprints.

(b) All applications for an individual to inspect his criminal history file must be on the form provided by GCIC.

(c) A money order or cash in the amount of $3.00 must accompany every application.

1. Money orders shall be made payable to the Georgia Bureau of Investigation.

2. A receipt shall be issued to the individual.

(d) Inspection of the file, or in the case of no file a statement indicating that fact, shall be produced for review by the individual who shall sign indicating review of same. The statement indicating no record shall remain on file at GCIC.

(2) Applications from individuals to GCIC to inspect their record.

(a) Individual applications to inspect a person's own criminal history file shall be accepted between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday. No applications shall be accepted on legal State holidays.

(b) Fingerprints shall be taken by a GCIC fingerprint technician.

(c) The Chief of Records and Identification or his designee shall be responsible for internal handling of the application including the collection of fees.

(3) Applications from individuals taken at other criminal justice agencies for processing at GCIC.

(a) Other criminal justice agencies may take applications from individuals for review of their file from GCIC provided that:

1. The agency has signed a Standard Criminal Justice Users Agreement - Intrastate with GCIC.

2. The applications are complete and signed by an agency officer responsible for fingerprinting. Only properly completed applications will be processed at the GCIC.

(b) GCIC will produce a copy of the individual's file and forward same via Certified Mail, Return Receipt Requested, Deliver Only to Addressee, to the Requesting Agency Officer.

(c) Authorization for inspection of the record by the individual will be the responsibility of this officer who will sign the application receipt at the place indicated on the form.

(4) Applications from an individual's attorney to be processed at GCIC. An attorney can inspect a copy of his client's criminal history record file provided:

(a) If taken by a criminal justice agency other than GCIC, that the criminal justice agency taking application has signed a Standard Criminal Justice User Agreement - Intrastate with the GCIC.

(b) The application is properly completed and accompanied by the individual's fingerprint card and shall be signed by the individual.

(c) A letter of authorization authorizing the GCIC to allow inspection of the individual's record by his attorney is required. Such letter shall be signed by said individual and accompanied by a certificate executed by the attorney as to his representation of the individual.

(d) The attorney is properly identified. It shall be the responsibility of the person and agency accepting the application to insure proper identification of the attorney.

(5) Applications made to other criminal justice agencies criminal history record files.

(a) Agencies shall query GCIC prior to permitting an individual to inspect his record to insure that the criminal history record information is the most current available. Exception may be made in those cases when time is of the essence and GCIC technically is incapable of responding within a four (4) hour period.

(b) Pursuant to the substance and content of these Rules, criminal justice agencies other than GCIC which maintain criminal history record information may prescribe their own applicable forms and procedures for an individual or his attorney to review his file.

(c) The fee for such applications shall not exceed three dollars ($3.00).

(d) These criminal justice agencies shall impose such procedures and restrictions as are reasonably necessary:

1. To assure the records' security.

2. To verify the identities of those who seek to inspect them, this may include but not necessarily mandate fingerprinting.

3. To maintain an orderly and efficient mechanism for such access.

(6) A copy of the contested portion of an individual's criminal history record may be disseminated only if the individual or his attorney wish to contest the completeness and accuracy of the record and that contest has been initiated.

(7) An individual who wishes to challenge or modify his criminal history record file must do so in accordance with Section 140-1-.06 of these Rules.

Authority 42 U.S.C. 3771, 28 C.F.R. § 20.21, Ga. L. 1973, pp. 1301, 1302, 1306, 1312, 1314.

attorney wish to contest the completeness and accuracy of the record and that contest has been initiated.

(7) An individual who wishes to challenge or modify his criminal history record file must do so in accordance with Section 140-1-.06 of these Rules.

Authority 42 USC 3771, 28 CFR § 20.21; Ga. L. 1973, pp. 1301, 1302, 1306, 1312, 1314. Administrative History. Original Rule was filed on February 25, 1976; effective March 16, 1976.

140-2-.11 Security Requirements for Criminal Justice Information in Data Processing Environment. Collection, storage, dissemination and message switching of criminal history record information by means of electronic data processing shall be kept secure by meeting or exceeding the following minimum security requirements.

(a) Where data are collected, stored or disseminated using a computer(s) the data shall be protected from access by unauthorized persons by means of software or hardware protect features which include logging attempted access by unauthorized terminals or persons.

(b) Where data are switched from one point to another using a computer said data transfer shall be protected from access by unauthorized persons by means of software or hardware protect features.

1. Message switching computers other than the GCIC computers shall be programmed or constructed in such a manner to prevent unauthorized copying or retention of the text of the message being switched.

2. Message switching computers other than the GCIC computers may log the handling of any message traffic and record such data elements as date, time, message number, origin, and destination. The text of the message shall not be recorded.

(c) Computers storing or disseminating criminal history record information shall perform logging activities pursuant to Rule 140-2-.06.

(d) Computer systems and the agencies operating or administratively responsible for the operating of computer systems utilized in whole or in part for the collection, storage, dissemination or message switching of criminal history record information shall be subject to an annual audit pursuant to Rule 140-2-.07.

(e) Physical security standards for computer systems used in whole or in part for the collection, storage, dissemination or message switching of criminal history record information shall be maintained pursuant to Rule 140-2-.08.

(f) Personnel Security Standards for persons hired, employed or retained to operate, program or maintain computer systems shall be pursuant to Rule 140-2-.09 and as follows:

1. The criminal justice agency responsible for the collection, storage, dissemination or message switching of criminal history record information operating in a computer under the direct administrative control of the criminal justice agency itself shall not employ, hire or retain any person who shall have been convicted, by any State or the Federal Government, of any crime, the punishment for which could have been imprisonment in a Federal or State Prison or institution; nor shall said person have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law.

2. The criminal justice agency responsible for the collection, storage, dissemination or message switching of criminal history record information using a computer not under the direct administrative control of the criminal justice agency shall have the right to investigate persons and to reject summarily the services of any person who shall have been convicted, by any State or Federal Government, of any crime, the punishment for which could have been imprisonment in a Federal or State prison or institution; nor shall said person have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law.

(g) Special requirements for computers used and shared by criminal justice and non-criminal justice agencies when the criminal justice use involves collection, storage, dissemination or message switching of criminal history record information shall be in effect no later than December 31, 1977.

1. Wherever shared memory are used, those memory locations used for criminal history record information data elements shall be cleared when released or returned to the available memory pool for non-criminal justice data processing.

2. Peripheral Input/Output data buffers used to process criminal history record information shall be cleared when the peripheral device or data buffer is released for non-criminal justice input output.

3. Intermediate, semi-permanent and permanent storage mediums such as magnetic disk and tape shall be cleared before they are released for non-criminal justice purposes.

(h) Secret data or data contained in a criminal justice system, whether dedicated or shared, shall be kept under maximum security conditions. Penalties for disclosure shall be in accordance with Section 7 of the Act.

(i) Liability for misuse of secret data or of criminal history record information processed in a shared computer environment shall be the responsibility of the agency administratively responsible for the direct supervision of the person or computer hardware or software involved in the misuse.

Authority 42 USC 3771, 28 CFR § 20.21; Ga. L. 1973, pp. 1307, 1310, 1311. Administrative History. Original Rule was filed on June 25, 1976; effective July 15, 1976.

§28-43 Exemptions. The requirements of this chapter as to fingerprinting (except with respect to the fingerprints upon the certificate of identification) may be waived by the attorney general as to any individual whose fingerprints are otherwise available, upon the making of proper cross references upon the records of the department of the attorney general. [L 1947, c 246, pt of §1; RL 1955, §32-13; am L Sp 1959 2d, c 1, §13]

§28-44 Forms. The attorney general may prepare, prescribe and furnish, in conformity with this part, forms for questionnaires, notices, fingerprint cards or forms, certificates of identification, instructions, and all other forms necessary or proper for the prompt, efficient, and adequate execution of the functions of the department of the attorney general set forth in this part. [L 1947, c 246, pt of §1; RL 1955, §32-14; am L Sp 1959 2d, c 1, §13]

§28-45 Custody and use of records; information confidential. (a) All information and records acquired by the department of the attorney general under this part shall be confidential. All records shall be filed in an appropriate office in the custody and under the control of the department, which shall at all times be kept separate from any similar records relating to the identification of criminals. The information shall be available only to authorized persons in the department, and such other persons or agencies as the attorney general, with the approval of the governor, shall authorize, under such restrictions as the attorney general, with such approval, shall prescribe. The information and records shall not be subject to subpoena or other court process except upon approval of the governor.

(b) No officer or employee of the department shall divulge any information concerning any registrant acquired from the records of the department or acquired in the performance of any of his duties under this part to any person not authorized to receive the same pursuant to this part or pursuant to the orders of the attorney general, approved by the governor, made under subsection (a). No person acquiring from the records any information concerning any registrant shall divulge the information to any person not so authorized to receive the same. [L 1947, c 246, pt of §1; RL 1955, §32-15; am L Sp 1959 2d, c 1, §13]

§28-46 Violations; penalties. Any person who (1) knowingly furnishes any false or untruthful information or answer, validly required under this part; or (2) violates or without adequate excuse fails to comply with any requirement of this part or of any rule or regulation issued pursuant thereto, which is legally applicable to him, and for which no other penalty is specifically prescribed by this part; or (3) without adequate excuse, fails to perform any act lawfully required to be performed by him pursuant to this part or such rules and regulations shall be fined not more than $500, or imprisoned not more than six months, or both; provided that failure of a person to report his lost, stolen, or destroyed certificate, or to return to the department of the attorney general his lost certificate when he has secured a duplicate and finds the lost certificate for which such duplicate was issued, shall be punishable by fine of not more than $5.

"Adequate excuse", as used in this section, means inability to comply with any such requirement or perform any such act, due to any cause beyond the control of the individual concerned and not due to his malfeasance, nonfeasance, or gross negligence. [L 1947, c 246, pt of §1; RL 1955, §32-16; am L Sp 1959 2d, c 1, §13]

PART IV. CRIME STATISTICS

§28-51 Superintendent and police heads to use identification systems. The superintendent of the state prison and the chiefs of police of the several counties shall employ and put into force and effect such systems of identification of prisoners and persons suspected of crime or of criminal intent and for the recording and compilation of crime statistics as the attorney general shall from time to time prescribe under this part. [L 1947, c 246, pt of §1; RL 1955, §33-1; am L 1963, c 34, §1]

§28-52 Systems of identification and statistics. The attorney general shall select and enforce systems of identification of prisoners and persons suspected of crime or of criminal intent and for the recording and compilation of statistics relating to crime. He shall establish systems of identification and provide for the collection of data and statistics relating to crime in manner as nearly as practicable according to the methods generally used in prisons and places of detention throughout the United States. The department of the attorney general shall instruct such employees of the prisons and places of detention and others charged with the preservation of the peace and well-being of society as the attorney general may deem necessary or proper, in such systems of identification and collection and compilation of crime statistics as the attorney general may direct.

The several counties shall provide the necessary equipment and the compensation of the persons required to install and carry out the work of such systems of identification and statistics in their respective jurisdictions; provided that all such expenses in connection with prison matters exclusively within the control of the State shall be borne by the State.

The systems shall be uniform throughout the State, shall be continuous in operation, and shall be maintained as far as possible in such manner as shall be in keeping with the most approved and modern methods of identification and of the collection and compilation of the statistics.

The attorney general shall keep a uniform record of the work of the courts, prosecuting officers, the police, and other agencies or officers for the prevention or detection of crime and the enforcement of law in a form suitable (1) for the study of the cause and prevention of crime and delinquency and of the efforts made and efficacy thereof to detect or prevent crime and to apprehend and punish violators of law and (2) for the examination of the records of the operations of such officers and the results thereof. [L 1947, c 246, pt of §1; RL 1955, §33-2; am L Sp 1959 2d, c 1, §13; am L 1963, c 85, §3]

Revision note

Section revised generally to conform to the Reorganization Act.

§28-53 Forms; reports. The attorney general may prescribe, establish, and change forms to be followed in keeping records and in making reports to the department of the attorney general. All courts and the judges and other officers thereof and all prosecuting officers, chiefs of police, and other agencies and officers for the prevention or

detection of crime and for the enforcement of law shall use such forms, keep such records; and make such reports to the department as may be so required. [L 1947, c 246, pt of §1; RL 1955, §33-3; am L Sp 1959 2d, c 1, §13]

Revision note

§28-54 **REPEALED.** L 1975, c 120, §2.

§28-54 **Disposition of fingerprints, photographs; penalty.** All fingerprints and photographs of persons against whom no charges of crime are preferred or against whom charges of crime are preferred and no convictions secured shall, when so requested in writing by such persons and within sixty days after such written request, be delivered to such persons or destroyed, unless it shall have been ascertained, from federal records or otherwise, that the persons concerned have a record of prior conviction or are fugitives from justice.

Any person having the custody and control of such fingerprints and photographs who knowingly violates the provisions of the preceding paragraph shall be fined not more than $100 or imprisoned not more than one year, or both. [L 1947, c 246, pt of §1; RL 1955, §33-4]

§28-55 **Reports to county clerk.** Whenever and as often as the department of the attorney general receives any record of the conviction of any citizen of eighteen years of age or over in the United States District Court for the District of Hawaii of felony, the department shall within ten days make and transmit a certificate of the information to the clerk of each county with a sufficient identifying description of the citizen. [L 1947, c 246, pt of §1; RL 1955, §33-5; am L 1955, c 191, §1(ff); am L Sp 1959 2d, c 1, §13]

§28-56 **Superintendent and police heads to furnish records, etc.** The superintendent of the state prison and the chiefs of police of the several counties are charged, ordered, and compelled to furnish to each municipal subdivision, and to the State, copies, duplicates, and records taken by them, or under their direction, of such matters and things as are contemplated and included in this part. [L 1947, c 246, pt of §1; RL 1955, §33-6; am L 1963, c 34, §1]

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5, provided further that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. [L 1975, c 166, pt of §1]

§92-5 Exceptions. (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

(1) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against him, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
(2) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
(3) To consult with the board's attorney;
(4) To investigate proceedings regarding criminal misconduct; and
(5) To consider sensitive matters related to public safety or security.

(b) This part shall not apply to any chance meeting at which matters relating to official business are not discussed. No chance meeting or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1]

§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability. (a) This part shall not apply:

(1) To the judicial branch.
(2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes.

In the application of this section, boards exercising adjudicatory functions include, but are not limited to, the following:

(i) Hawaii Employment Relations Board, chapter 377;
(ii) Hawaii Public Employment Relations Board, chapter 89;
(iii) Labor and Industrial Relations Appeals Board, chapter 371;
(iv) Board of Paroles and Pardons, chapter 353;
(v) Civil Service Commission, chapter 26;
(vi) Board of Trustees, Employees' Retirement System of the State of Hawaii, chapter 88;
(vii) Criminal Injuries Compensation Commission, chapter 351; and
(viii) State Ethics Commission, chapter 84.

(b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the Land Use Commission. [L 1975, c 166, pt of §1]

§92-9 Minutes.

(b) The minutes shall be public records and shall be available within thirty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

Sec. 92-50 PUBLIC PROCEEDINGS AND RECORDS

§92-50 Definition. As used in this part, "public record" means any written or printed report, book or paper, map or plan of the State or of a county and their respective subdivisions and boards, which is the property thereof, and in or on which an entry has been made or is required to be made by law, or which any public officer or employee has received or is required to receive for filing, but shall not include records which invade the right of privacy of an individual. [L 1975, c 166, pt of §2]

Attorney General Opinions

Applications for licenses are not "public records." Att. Gen. Op. 75-7.
Referred to generally. Att. Gen. Op. 76-3.

§92-51 Public records; available for inspection. All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state or federal law, provided that except where such records are open under any rule of court, the attorney general and the responsible attorneys of the various counties may determine which records in their offices may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the State or county is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of a character or reputation of any person. [L 1975, c 166, pt of §2; am L 1976, c 212, §4]

Attorney General Opinions

Referred to generally. Att. Gen. Op. 76-3.

§92-52 Denial of inspection; application to circuit courts. Any person aggrieved by the denial by the officer having the custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may apply to the circuit court of the circuit wherein the public record is found for an order directing the officer to permit the inspection of or to furnish copies of extracts of the public records. The court shall grant the order after hearing upon a finding that the denial was not for just and proper cause. [L 1975, c 166, pt of §2]

§571-84 Records. The court shall maintain records of all cases brought before it. In proceedings under section 571-11, and in paternity proceedings under chapter 579, the following records shall be withheld from public inspection: the court docket, petitions, complaints, motions, and other papers filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers other than social records filed in proceedings before the court. The records other than social records shall be open to inspection by the parties and their attorneys, by an institution or agency to which custody of a minor has been transferred, by an individual who has been appointed guardian; with consent of the judge, by persons having a legitimate interest in the proceedings from the standpoint of the welfare of the minor; and, pursuant to order of the court or the rules of court, by persons conducting pertinent research studies, and by persons, institutions, and agencies having a legitimate interest in the protection, welfare, or treatment of the minor.

Reports of social and clinical studies or examinations made pursuant to this chapter shall be withheld from public inspection, except that information from such reports may be furnished, in a manner determined by the judge, to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare, and treatment of the minor.

No information obtained or social records prepared in the discharge of official duty by an employee of the court shall be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive such information, unless and until otherwise ordered by the judge.

Without the consent of the judge, neither the fingerprints nor a photograph shall be taken of any child in police custody, unless the case is transferred for criminal proceedings. Except for the immediate use in such criminal case, any photograph or fingerprint taken upon such transfer shall not be used or circulated for any other purpose and shall be subject to all rules and standards provided for in section 571-74.

The records of any police department, and of any juvenile crime prevention bureau thereof, relating to any proceedings authorized under section 571-11 shall be confidential and shall be open to inspection only by persons whose official duties are concerned with the provisions of this chapter, except as otherwise ordered by the court. Any such police records concerning traffic accidents in which a child or minor coming within section 571-11(1) is involved shall, after the termination of any proceeding under section 571-11(1) arising out of any such accident, or in any event after six months from the date of the accident, be available for inspection by the parties directly concerned in the accident, or their duly licensed attorneys acting under written authority signed by either party. Any person who may sue because of death resulting from any such accident shall be deemed a party concerned.

Evidence given in proceedings under section 571-11(1) or (2) shall not in any civil, criminal, or other cause be lawful or proper evidence against the child or minor therein involved for any purpose whatever, except in subsequent proceedings involving the same child under section 571-11(1) or (2). [L 1965, c 232, pt of §1; Supp §333-39; HRS §571-84; am L 1973, c 211, §1(f)]

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§712-1255 Conditional discharge. (1) Whenever any person who has not previously been convicted of any offense under this part of chapter 329 or under any statute of the United States or of any state relating to a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound, pleads guilty to or is found guilty of promoting a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound under sections 712-1243, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(2) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him.

(3) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(4) There may be only one discharge and dismissal under this section with respect to any person.

(5) After conviction, for any offense under this part or chapter 329, but prior to sentencing, the court shall be advised by the prosecutor whether the conviction is defendant's first or a subsequent offense. If it is not a first offense, the prosecutor shall file an information setting forth the prior convictions. The defendant shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit the trial, before a jury if the defendant has a right to trial by jury and demands a jury, on the sole issue of the defendant's identity with the person previously convicted. [L 1972, c 9, pt of §1]

§712-1256 Expunging of court records. (1) Upon the dismissal of such person and discharge of the proceeding against him under section 712-1255, this person, if he was not over twenty years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, trial, finding of guilt, and dismissal and discharge pursuant to this section.

(2) If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty years of age at the time of the offense, it shall enter such order.

(3) The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information.

(4) No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or indictment or information, or trial in response to any inquiry made of him for any purpose. [L 1972, c 9, pt of §1]

§831-1 Definition. In this chapter, "felony" means an offense that is punishable with imprisonment for a term which is in excess of one year. [L 1969, c 250, pt of §1; HRS §716-1; renumbered L 1972, c 9, pt of §1; am L 1975, c 14, §1]

§831-2 Rights lost. (a) A person sentenced for a felony, from the time of his sentence until his final discharge, may not:

(1) Vote in an election, but if execution of sentence is suspended with or without the defendant being placed on probation or his is paroled after commitment to imprisonment, he may vote during the period of the suspension or parole; or

(2) Become a candidate for or hold public office.

(b) A public office held at the time of sentence is forfeited as of the date of the sentence if the sentence is in this State, or, if the sentence is in another state or in a federal court, as of the date a certification of the sentence from the sentencing court is filed in the office of the lieutenant governor who shall receive and file it as a public document. An appeal or other proceeding taken to set aside or otherwise nullify the conviction or sentence does not affect the application of this section, but if the conviction is reversed the defendant shall be restored to any public office forfeited under this chapter from the time of the reversal and shall be entitled to the emoluments thereof from the time of the forfeiture. [L 1969, c 250, pt of §1; HRS §716-2; renumbered L 1972, c 9, pt of §1]

§831-3 Rights retained by convicted person. Except as otherwise provided by this chapter, a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of his rights, political, personal, civil, and otherwise, including the right to hold public office or employment, to vote, to hold, receive, and transfer property, to enter into contracts, to sue and be sued, and to hold offices of private trust in accordance with law. [L 1969, c 250, pt of §1; HRS §716-3; renumbered L 1972, c 9, pt of §1]

Case Notes

Felon can be employed as a state correction officer and can carry a gun. 402 F. Supp. 84.

§831-3.1 Prior convictions; criminal records; noncriminal standards. (a) A person shall not be disqualified from employment by the State or any of its political subdivisions or agencies, or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its political subdivisions or agencies, solely by reason of a prior conviction of a crime; provided that with respect to liquor licenses, this subsection shall not apply to a person who has been convicted of a felony.

(b) The following criminal records shall not be used, distributed, or disseminated by the State or any of its political subdivisions or agencies in connection with an application for any said employment, permit, license, registration, or certificate:

Sec. 831-3.1 PROCEDURAL AND SUPPLEMENTARY PROVISIONS

(1) Records of arrest not followed by a valid conviction;
(2) Convictions which have been annulled or expunged;
(3) Convictions of a penal offense for which no jail sentence may be imposed;
(4) Conviction of a misdemeanor in which the period of twenty years has elapsed since date of conviction and during which elapsed time there has not been any subsequent arrest or conviction.

Except as provided in paragraphs (1) to (4), the State or any of its political subdivisions or agencies may consider as a possible justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of a penal offense when such offense directly relates (i) to the applicant's possible performance in the job applied for, or (ii) to the employee's possible performance in the job which he holds, or (iii) to the applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

For the purpose of this subsection, such refusal, suspension, or revocation may occur only when the agency determines, after investigation in accordance with chapter 91, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; provided that discharge from probation or parole supervision, or a period of two years after final discharge or release from any term of imprisonment, without subsequent criminal conviction, shall be deemed rebuttable prima facie evidence of sufficient rehabilitation.

(c) When considering noncriminal standards such as good moral character, temperate habits, habitual intemperate use of intoxicants, trustworthiness, and the like, in the granting, renewal, suspension, or revocation of any employment or any such permit, license, registration, or certificate, the agency shall not take into consideration the conviction of any crime except as provided by subsection (b). Nothing in this section shall be construed to otherwise affect a proceeding before any agency which does not involve the conviction of a crime.

(d) This section shall prevail over any other law which purports to govern the denial or issuance of any permit, license, registration, or certificate by the State or any of its political subdivisions or agencies. [L 1974, c 205, §2; am L 1975, c 54, §1; am L 1976, c 113, §2]

Legislative purpose, see L 1974, c 205, §1.
Note. The proviso at end of subsection (a), added by L 1976, applies to all liquor license applications pending on May 17, 1976. L 1976, c 113, §4.

Case Notes

Felon can be employed as state correction officer and can carry a gun. 402 F. Supp. 84.

§831-3.2 Expungement orders. (a) The attorney general, or his duly authorized representative within the department of the attorney general, upon written application from a person arrested for, or charged with but not convicted of a crime, shall issue an expungement order annulling, canceling, and rescinding the record of arrest; provided that an expungement order shall not issue (1) in the case of an arrest for a felony or misdemeanor where conviction has not been obtained because of bail forfeiture, (2) for a period of five years after arrest or citation in the case of a petty misdemeanor or violation where conviction has not been obtained because of a bail forfeiture; and (3) in the case of an arrest of any person for any offense where conviction has not been obtained because he has rendered prosecution impossible by absenting himself from the jurisdiction.

Any person entitled to an expungement order hereunder may by written application also request return of all fingerprints or photographs taken in connection with his arrest. The attorney general or his duly authorized representative within the department of the attorney general, within 60 days after receipt of such written application, shall, when so requested, deliver, or cause to be delivered, all such fingerprints or photographs of such person, unless such person has a prior record of conviction or is a fugitive from justice, in which case the photographs or fingerprints may be retained by the agencies holding such records.

(b) Upon the issuance of the expungement order, the person applying for the order shall be treated as not having been arrested in all respects not otherwise provided for in this section.

(c) Upon the issuance of the expungement order, all records pertaining to the arrest which are in the custody or control of any law enforcement agency of the state or any county government, and which are capable of being forwarded to the attorney general without affecting other records not pertaining to the arrest, shall be so forwarded for placement of the records in a confidential file or, if the records are on magnetic tape or in a computer memory bank, shall be erased.

(d) Records filed under subsection (c) shall not be divulged except upon inquiry by:

(1) A court of law or an agency thereof which is preparing a presentence investigation for the court; or

(2) An agency of the federal government which is considering the subject person for a position immediately and directly affecting the national security.

Response to any other inquiry shall not be different from responses made about persons who have no arrest record.

(e) The attorney general or his duly authorized representative within the department of the attorney general shall issue to the person for whom an expungement order has been entered, a certificate stating that the order has been issued and that its effect is to annul the record of a specific arrest. The certificate shall authorize the person to state, in response to any question or inquiry, whether or not under oath, that he has no record regarding the specific arrest. Such a statement shall not make the person subject to any action for perjury, civil suit, discharge from employment, or any other adverse action.

(f) The meaning of the following terms as used in this section shall be as indicated:

(1) "Conviction" means a final determination of guilt whether by plea of the accused in open court, by verdict of the jury or by decision of the court.

(2) "Arrest record" means the document, magnetic tape or computer memory bank, produced under authority of law, which contains the data of legal proceedings against a person beginning with his arrest for the alleged commission of a crime and ending with final disposition of the charges against the person by nonconviction.

(g) The attorney general shall adopt rules pursuant to chapter 91 necessary for the purpose of this section.

(h) Nothing in this section shall affect the compilation of crime statistics as provided in part IV of chapter 28. [L 1974, c 92, §2; am L 1975, c 103, §1; am L 1976, c 116, §§1, 2]

GUIDELINES OF OPERATIONAL PROCEDURES FOR INDIVIDUAL ACCESS AND REVIEW OF CRIMINAL HISTORY RECORD INFORMATION

1. AUTHORITY - Pursuant to United States Department of Justice Regulations (28 C.F.R. Section 20.1 et seq.) all criminal justice agencies (as defined in 28 C.F.R. Section 20.3(c)) must insure an individual's right to access and review of criminal history record information for purposes of accuracy and completeness (28 C.F.R. Section 20.21 (g)).

2. VERIFICATION OF IDENTITY - Access and review of an individual's criminal history record information shall be permitted only after the individual has presented satisfactory verification of identity in the form of a sworn authorization and proof of identity (e.g., driver's license, I.D. card). Each criminal justice agency may optionally require a fingerprint comparison.

3. ACCESS AND REVIEW

   a. Agency, time, and place.

   Upon presentation of satisfactory verification, all criminal justice agencies must permit the individual the right to examine his criminal history record information on file. Such access shall only be permitted during normal office hours unless otherwise specifically authorized.

   b. Copies and Fees.

   The individual may obtain a copy of the criminal history record information at prescribed fees only when it is the intent of the individual to register a formal challenge that the criminal history record information contains erroneous data and the copy is required to adequately prepare the challenge. The copy shall be marked or stamped to indicate that it is for review and challenge only and that any other use would be in violation of Federal Law (42 U.S.C. §3701 et seq.).

   c. Counsel.

   An individual may allow an attorney to review his criminal history record information. The individual must sign a notarized statement which grants permission to the attorney to review his criminal history record information. In addition, the attorney must agree to disclose the criminal history record information only to the individual.

d. Explanatory Material.

If an entry in the criminal history record information is ambiguous, the individual may submit explanatory materials and request that explanatory remarks be added to the record. Entries are ambiguous if they tend to lead a reasonable person to ascribe conflicting definitions to the information. Explanatory materials may include: written statements; certified copies of official documents; legal briefs and memoranda; court orders and opinions; or any other non-printed materials (e.g., photographs, fingerprint records).

4. CHALLENGE, ADMINISTRATIVE REVIEW, AND APPEAL

a. Form and Method of Challenge.

If the individual finds that any of the entries made in the criminal history record information which refers to him are inaccurate or incomplete, he may request the respective agency with custody or control of the information to amend or supplement that information. The individual shall be informed of the agency's decision within ten working days after the request. Should the agency decline so to act or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual may request in writing for administrative review of the decision. The request shall provide a concise statement of the alleged deficiencies of the information, shall state the date and result of any review by the agency, and shall append a sworn verification of the facts alleged in the request signed by the individual.

Each criminal justice agency shall designate an administrative review officer(s) who will evaluate each request and shall determine, based upon the evidence, whether there is prima facie evidence that the information is inaccurate or incomplete. Should the Administrative Review Officer find that there is insufficient evidence, the Officer shall issue written findings and conclusions which will state to what relief the Officer believes the individual is entitled.

b. Corrections and Notification of Error.

If corrections, amendments, or additions to the criminal history record information are recommended, such changes shall be entered and the individual will be provided upon request a list of all non-criminal justice agencies which have received copies of the information.

Notice of corrections, amendments, or additions to the criminal history record information must be sent to all criminal justice agency recipients.

The names of agencies to which corrections were sent and the date that the notifications were released will be recorded by the agency originating the corrections.

c. Appeal to Privacy Committee.

If the individual wishes to appeal the Administrative Review Officer's decision to the Privacy Committee, such appeal shall be governed solely by Chapter 92, Hawaii Revised Statutes (Administrative Procedure Act). The Privacy Committee shall be the final administrative decision maker from which the individual may resort to legal remedies.

5. INFORMATION NOT SUBJECT TO REVIEW - The individual's right to review shall be limited to criminal history record information (as defined by 28 C.F.R. §20.3(b)) and shall not extend to data or information contained in intelligence, investigatory, or other related files (28 C.F.R. §20.21(g)(6)).

CHAPTER 52—LAW ENFORCEMENT COMMUNICATIONS

19-5201. Criminal justice teletypewriter—Communications—Intent and purpose.—The maintenance of law and order is, and always has been, a primary function of government and is so recognized in both federal and state constitutions. The state has an unmistakable responsibility to give full support to all public agencies of the criminal justice system. This responsibility includes the provision of an efficient law enforcement communications network available to all state and local agencies. It is the intent of the legislature that such a network be established and maintained in a condition adequate to the needs of the criminal justice system and highway safety. It is the purpose of this act to establish a criminal justice teletypewriter communications network for the state of Idaho. [1971, ch. 195, § 1, p. 884.]

Compiler's note. The words "this act" refer to S. L. 1971, ch. 195, compiled herein as §§ 19-5201—19-5204.

Comp. leg. Cal. Deering's Codes, Government Code, §§ 15150-15167.

Mont. Rev. Codes 1947, §§ 82-3901—82-3906.

Wash. Rev. Code, §§ 43.89.010-43.89.050.

19-5202. Establishment of network—Use—Rental charge—Interstate connection.—(1) Establishment of network. The director of the department of law enforcement of the state of Idaho shall establish a teletypewriter communications network which will interconnect the criminal justice agencies of this state and its political subdivisions and all agencies engaged in the promotion of highway safety into a unified teletypewriter communications system. The director is authorized to lease such transmitting and receiving facilities and equipment as may be necessary to establish and maintain such teletypewriter communications network.

(2) Use of network. The teletypewriter communications network shall be used exclusively for the law enforcement business of the state of Idaho and all the political subdivisions thereof, including all agencies engaged in the promotion of traffic safety.

(3) Judiciary and traffic safety. Nothing in this act shall prohibit the use of or participation in the teletypewriter communications herein provided by the judicial branch of the state government or by any other department, agency or branch of state or local government engaged in traffic safety.

(4) Rental. The monthly rental to be charged each department or agency participating in the teletypewriter communications network

on a terminal or unit basis by the teletypewriter communications board and in setting such rental charge the board shall take into consideration the usage of said network by each participant and of the economic position of each participant.

(5) Interstate connection. The teletypewriter communications network provided for herein is hereby authorized to connect and participate with teletypewriter communications network systems of other states and provinces of Canada. [1971, ch. 195, § 2, p. 884; am. 1974, ch. 27, § 10, p. 811.]

Compiler's note. Section 9 of S. L. 1974, ch. 27 is compiled herein as § 19-4813.

19-5203. Teletypewriter communications board—Creation—Composition—Terms—Rules and regulations—Compensation of members.—(1) There is hereby created within the department of law enforcement a teletypewriter communications board which shall be composed of five (5) members appointed by the governor.

The members of the teletypewriter communications board shall be composed of the following:

(a) Two (2) incumbent county sheriffs;

(b) Two (2) incumbent city chiefs of police;

(c) One (1) member of the Idaho state police.

(2) The term of office of the first board shall be staggered with the one (1) appointment expiring January 1, 1972; one (1) appointment expiring January 1, 1973; one (1) appointment expiring January 1, 1974; one (1) appointment expiring January 1, 1975; and one (1) appointment expiring January 1, 1976.

Thereafter, the term of office of each chief of police, sheriff and member of the Idaho state police shall be for a term of five (5) years.

The director of the department of law enforcement shall be an ex officio member of the board.

In the event any chief of police, sheriff or member of the Idaho state police ceases to be such chief of police, sheriff, or member of the Idaho state police, his appointment to said board shall terminate and cease immediately and the governor shall appoint a qualified person in such category to fill the unexpired term of such member.

(3) The board shall, upon their appointment, adopt such rules, regulations, procedures and methods of operation as may be necessary to establish and put into use the most efficient and economical statewide teletypewriter communications network and shall publish and distribute said rules, regulations and procedures to each participating department, agency or office.

(4) Salaries and expenses. Members of said board shall serve without pay or salary but shall be allowed their actual and necessary expenses in the performance of their duties as members of said board, which expenses shall be paid from moneys appropriated for the funding of this act.

The performance of duties under this act by a member of the board shall be deemed to be in performance of his duties as an employee of his particular branch of government. [1971, ch. 195, § 3, p. 884; am. 1974, ch. 27, § 11, p. 811.]

19-5204. Executive officer of board.—The director of the department of law enforcement of the state of Idaho shall be the executive officer of the teletypewriter communications network board and shall be responsible for the carrying out of the policies and rules of the board and with the management and expenditures of such funds as may be appropriated to implement this act. [1971, ch. 195, § 4, p. 884; am. 1974, ch. 27, § 12, p. 811.]

19-4807. Cooperation and exchange of information.—The * * *Idaho state police* shall cooperate and exchange information with any other department or authority of the state or with other police forces, both within this state and outside it, and with federal * * * *agencies to achieve* greater success in preventing and detecting crimes and apprehending criminals. [1939, ch. 60, § 7, p. 105; am. 1955, ch. 173, § 6, p. 345.]

19-4812. Criminal identification, records and statistics.—(1) Definitions as used in this section and section 19-4813, Idaho Code:

(a) "Bureau" means the criminal identification, records and communications bureau in the department of law enforcement of the state of Idaho.

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Offense" means an act which is a felony, a misdemeanor or a petty misdemeanor.

(2) The bureau shall:

(a) Obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state:

1. for an offense which is a felony;

2. for an offense which is a misdemeanor or petty misdemeanor involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

3. for an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subdivision 2;

4. as a fugitive from justice;

5. for any other offense designated by the director of the bureau.

(b) Accept for filing fingerprints and other identifying data, taken at the discretion of the law enforcement agency involved, on persons arrested or taken into custody for offenses other than those listed in paragraph (a).

(c) Obtain and file fingerprints and other available identifying data on unidentified human corpses found in this state.

(d) Obtain and file information relating to identifiable stolen or lost property.

(e) Obtain and file a copy or detailed description of each arrest warrant issued in this state in which the law enforcement agency desires the return of the person described in said warrant but which is not served because the whereabouts of the person named on the warrant is unknown or because that person has left the state. All available identifying data shall be obtained with the copy of the warrant, including any information indicating that the person named on the warrant may be armed, dangerous or possessed of suicidal tendencies.

(f) Collect information concerning the number and nature of all offenses designated by the director of the bureau, including, but not limited to, Part I and Part II offenses as defined by the federal bureau of investigation under its system of uniform crime reports for the United States which are known to have been committed in this state, the legal action taken in connection with such offenses from the inception of the complaint to the final discharge of the defendant and such other information as may be useful in the study of crime and the administration of justice. The director of the bureau may determine any other information to be obtained regarding crime statistics. However, the information shall include such data as may be requested by the federal bureau of investigation under its system of uniform crime reports for the United States.

(g) Furnish all reporting officials with forms and instructions which specify in detail the nature of the information required under paragraphs (a) to (f), inclusive, the time it is to be forwarded, the method of classifying and such other matters as shall facilitate collection and compilation.

(h) Cooperate with and assist all law enforcement agencies in the state in the establishment of a state system of criminal identification and in obtaining fingerprints and other identifying data on all persons described in paragraphs (a), (b) and (c).

(i) Offer assistance and, when practicable, instructions to all local law enforcement agencies in establishing efficient local bureaus of identification and records systems.

(j) Compare the fingerprints and descriptions that are received from law enforcement agencies with the fingerprints and the descriptions already on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement agencies concerned and supply copies of the criminal records to these agencies.

(k) Make available all statistical information obtained to the governor and the legislature.

(*l*) Prepare and publish reports and releases at least once a year and no later than July 1, containing the statistical information gathered under this section and presenting an accurate picture of crime in this state and of the operation of the agencies of criminal justice.

(m) Make available upon request, to all local and state law enforcement agencies in this state, to all federal law enforcement and criminal identification agencies, and to state law enforcement and criminal identification agencies in other states, any information in the files of the bureau which aid these agencies in the performance of their official duties. For this purpose the bureau shall operate on a twenty-four (24) hour a day basis, seven (7) days a week. Such information may also be made available to any other agency of this state or political subdivision thereof, and to any other federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only.

(n) Cooperate with other agencies of this state, the criminal justice agencies of other states, and the uniform crime reports and the national crime information center systems of the federal bureau of investigation in developing and conducting an interstate, national and international system of criminal identification, records and statistics. [I. C., § 19-4812, as added by 1972, ch. 238, § 1, p. 621; am. 1974, ch. 27, § 8, p. 811.]

Compiler's note. Section 7 of S. L. 1974, ch. 27 is compiled herein as § 19-4805.

Sec. to sec. ref. This section is referred to in § 19-4813.

19-4813. Cooperation in criminal identification, records and statistics.—(1) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, the fingerprints in duplicate, according to the fingerprint system of identification established by the director of the federal bureau of investigation, full face, profile and full length photographs, if possible, and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in section 19-4812(2)(a), Idaho Code, of all persons arrested or taken into custody as fugitives from justice, and fingerprints in duplicate and other identifying data of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file at the bureau. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated in section 19-4812(2)(a), Idaho Code, may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned upon request and pursuant to judicial order.

(2) Fingerprints and other identifying data required to be taken under subsection (1) shall be forwarded to the bureau within fourteen (14) days after taking for filing and classification but the period of fourteen (14) days may be extended to cover any intervening holiday or weekend.

(3) All persons in charge of law enforcement agencies shall forward to the bureau copies or detailed descriptions of the arrest warrants and the identifying data described in section 19-4812(2)(c), Idaho Code, immediately upon determination of the fact that the warrant cannot be served for the reason stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the bureau of such service or withdrawal. In any case, the law enforcement agency concerned must annually, no later than January 31 of each year, confirm to the bureau all arrest warrants of this type which continue to be outstanding.

(4) All persons in charge of state penal and correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the director of the federal bureau of investigation, and full face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the bureau, together with any other identifying data requested, within ten (10) days after the arrival at the institution of the person committed. Full length photographs in release dress shall be taken immediately prior to the release of such persons from these institutions. Immediately after release, these photographs shall be forwarded to the bureau.

(5) All persons in charge of law enforcement agencies, all clerks of court, all persons in charge of state, county and municipal penal and correctional institutions, and all persons in charge of state and county probation and parole offices shall supply the bureau with the information described in section 19-4812(2)(f), Idaho Code, on the basis of the forms and instructions to be supplied by the bureau under section 19-4812(2)(g), Idaho Code. Provided, however, that clerks of court are not required to provide said information to the bureau if they have previously provided the information to the law enforcement agency submitting the offense report and the law enforcement agency has forwarded the information to the bureau.

(6) All persons in charge of law enforcement agencies in this state shall furnish the bureau with any other identifying data required in accordance with guidelines established by the bureau. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the bureau copies of such items presently in these files as will aid in establishing the nucleus of the state criminal identification file. [I. C., § 19-4813, as added by 1972, ch. 238, § 2, p. 621; am. 1974, ch. 27, § 9, p. 811.]

CRIMINAL IDENTIFICATION AND INVESTIGATION

§ 206-1. Powers of Department of Law Enforcement—Employees or assistants

The Department of Law Enforcement hereinafter referred to as the "Department", is hereby empowered to cope with the task of criminal identification and investigation.

The Director of the Department of Law Enforcement shall, from time to time, appoint such employees or assistants as may be necessary to carry out this work. Employees or assistants so appointed shall receive salaries subject to the standard pay plan provided for in the "Personnel Code", approved July 18, 1955, as amended.[1]

Laws 1931, p. 464, § 1, eff. July 2, 1931. Amended by Laws 1941, vol. 1, p. 1213, § 1, eff. July 1, 1941; Laws 1945, p. 678, § 1, eff. July 1, 1945; Laws 1951, p. 1920, § 1, eff. Aug. 2, 1951; Laws 1967, p. 3803, § 1, eff. Sept. 7, 1967; P.A. 76-444, § 1, approved July 18, 1969, eff. Jan. 1, 1970.

§ 206-2. Records of convicted persons

The Department shall procure and file for record, as far as can be procured from any source, photographs, all plates, outline pictures, measurements, descriptions and information of all persons who have been arrested on a charge of violation of a penal statute of this State and such other information as is necessary and helpful to plan programs of crime prevention, law enforcement and criminal justice, and aid in the furtherance of those programs.

Laws 1931, p. 464, § 2, eff. July 2, 1931. Amended by Laws 1951, p. 1920, § 1, eff. Aug. 2, 1951; P.A. 76-444, approved July 18, 1969, § 1, eff. Jan. 1, 1970.

§ 206-2.1 Criminal case information—Final dispositions—Notice of changes

For the purpose of maintaining complete and accurate criminal records within the Bureau of Identification of the Department of Law Enforcement, it is necessary for the clerk of the circuit court and State's Attorney of each county to submit certain criminal case information to the Bureau of Identification for filing along with criminal arrest records.

The clerk of the circuit court of each county shall furnish the Bureau of Identification with all final dispositions of criminal cases for which the Bureau has record of an arrest.

The State's Attorney of each county shall notify the Bureau of Identification of all charges filed and whether charges were not filed in criminal cases for which the Bureau has record of an arrest.

All information required by this Section shall be furnished within 30 days of any decision not to file a criminal complaint after arrest; or if a complaint is filed, within 30 days of final disposition of the case.

Laws 1931, p. 464, § 2.1, added by P.A. 79-010, § 1, eff. Oct. 1, 1975.

38 § 206-3

§ 206-3. Information to be furnished peace officers

The Department shall file or cause to be filed all plates, photographs, outline pictures, measurements, descriptions and information which shall be received by it by virtue of its office and shall make a complete and systematic record and index of the same, providing thereby a method of convenient reference and comparison. The Department shall furnish, upon application, all information pertaining to the identification of any person or persons, a plate, photograph, outline picture, description, measurements, or any data of which there is a record in its office. Such information shall be furnished to peace officers of the United States, of other states or territories, of the Insular possessions of the United States, of foreign countries duly authorized to receive the same, and to all peace officers of the State of Illinois. Applications shall be in writing and accompanied by a certificate, signed by the peace officer making such application, to the effect that the information applied for is necessary in the interest of and will be used solely in the due administration of the criminal laws.

Laws 1931, p. 464, § 3, eff. July 2, 1931. Amended by Laws 1951, p. 1920, § 1, eff. Aug. 2, 1951.

§ 206-4. Systems of identification

The Department may use the following systems of identification: The Bertillion system, the finger print system, and any system of measurement or identification that may be adopted by law or rule in the various penal institutions or bureaus of identification wherever located.

The Department shall make a record consisting of duplicates of all measurements, processes, operations, signalletic cards, plates, photographs, outline pictures, measurements, descriptions of and data relating to all persons confined in penal institutions wherever located, so far as the same are obtainable, in accordance with whatever system or systems may be found most efficient and practical.

Laws 1931, p. 464, § 4, eff. July 2, 1931. Amended by Laws 1951, p. 1920, § 1, eff. Aug. 2, 1951; Laws 1957, p. 1422, § 1, eff. July 6, 1957.

§ 206-5. Daily copies of Finger Prints—Duty of Sheriffs and Police Officers

All policing bodies of this State shall furnish to the Department, daily, in the form and detail the Department requires, copies of finger prints and descriptions, of all persons who are arrested on charges of violating any penal statute of this State; and of all persons who have in their possession, inks, dye, paper or other articles necessary in the making of counterfeit notes or in the alteration of bank notes or dies, molds or other articles used in the making of counterfeit money and intended to be used by them for such unlawful purposes; however, this Section does not apply to any of such offenses which are not classified as a felony or as a Class A or Class B misdemeanor The Department may by its promulgated rule exempt specific police departments which have acceptable machine record reports from sending any "raw" material to the Department required by this Section except finger prints and

photographs. Whenever a policing body is so exempted by rule it shall furnish to the Department acceptable copies of their machine record reports covering the exempted "raw" material. All photographs, finger prints or other records of identification so taken shall, upon the acquittal of a person charged with the crime, or, upon his being released without being convicted, be returned to him. Whenever a person, not having previously been convicted of any criminal offense or municipal ordinance violation, charged with a violation of a municipal ordinance or a felony or misdemeanor, is acquitted or released without being convicted, the Chief Judge of the circuit wherein the charge was brought, or any judge of that circuit designated by the Chief Judge, may upon verified petition of the defendant order the record of arrest expunged from the official records of the arresting authority. However, in the case of an acquittal or a discharge following a period of supervision under Section 5-6-3.1 of the "Unified Code of Corrections",[1] no such petition may be filed nor the record of arrest ordered expunged until 3 years from the date of such acquittal or discharge. For purposes of this Section, convictions for moving and nonmoving traffic violations other than convictions for violations of Sections 6-303, 11-401, 11-501, 11-503 and 11-504 of "The Illinois Vehicle Code" [2] shall not be a bar to expunging the record of arrest for violation of a misdemeanor or municipal ordinance. Notice of the above petition shall be served upon the State's Attorney or prosecutor charged with the duty of prosecuting the offense. Unless the State's Attorney or prosecutor objects to the petition within 30 days from the date of the notice, the court shall enter an order granting or denying the petition. The clerk of the court shall promptly mail a copy of the order to the accused.

Amended by P.A. 78-851, § 1, eff. Oct. 1, 1973; P.A. 79-905, § 1, eff. Oct. 1, 1975; P.A. 79-910, § 1, eff. Oct. 1, 1975; P.A. 79-953, § 1, eff. Oct. 1, 1975; P.A. 79-1334, § 2, eff. Aug. 2, 1976; P.A. 79-1454, § 18, eff. Aug. 31, 1976.

§ 206-7. Records not to be public

No file or record of the Department hereby created shall be made public, except as may be necessary in the identification of persons suspected or accused of crime and in their trial for offenses committed after having been imprisoned for a prior offense; and no information of any character relating to its records shall be given or furnished by said Department to any person, bureau or institution other than as herein provided. Violation of this Section shall constitute a Class A misdemeanor.

However, if an individual requests the Department to release information as to the existence or nonexistence of any criminal record he might have, the Department shall do so upon determining that the person for whom the record is to be released is actually the person making the request.

Section 2. [S.H.A. ch. 38, § 206-7 note] This amendatory Act takes effect upon its becoming a law.

Approved and effective Sept. 21, 1977.

LAW ENFORCEMENT COMMISSION

PUBLIC ACT 80-805

SENATE BILL 30

An Act creating an Illinois Law Enforcement Commission and defining its powers and duties.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. [S.H.A. ch. 38, § 209-1] Purpose of Act

The purpose of this Act is to stimulate the research and development of new methods for the prevention and reduction of crime; to encourage the preparation and adoption of comprehensive plans for the improvement and coordination of all aspects of law enforcement and criminal and juvenile justice; and to permit evaluation of State and local programs associated with the improvement of law enforcement and the administration of criminal and juvenile justice, as provided in the federal Crime Control Act of 1973, as amended,[1] and the federal Juvenile Justice and Delinquency Prevention Act of 1974,[2] including their subsequent amendments or reenactments, if any.

[1] 42 U.S.C.A. § 3701 et seq.
[2] 42 U.S.C.A. § 5601 et seq.

Sec. 2. [S.H.A. ch. 38, § 209-2] Definitions

Whenever used in this Act, and for the purposes of this Act unless the context clearly denotes otherwise:

(a) The term "criminal justice system" includes all activities by public or private agencies or persons pertaining to the prevention or reduction of crime or enforcement of the criminal law, and particularly, but without limitation, the prevention, detection, and investigation of crime; the apprehension of offenders; the protection of victims and witnesses; the administration of juvenile justice; the prosecution and defense of criminal cases; the trial, conviction, and sentencing of offenders; as well as the correction and rehabilitation of offenders, which includes imprisonment, probation, parole and treatment.

(b) The term "Commission" means the Illinois Law Enforcement Commission created by this Act.

(c) The term "unit of general local government" means any county, municipality or other general purpose political subdivision of this State.

Sec. 3. [S.H.A. ch. 38, § 209-3] Illinois Law Enforcement Commission—Creation and Membership

There is created an Illinois Law Enforcement Commission consisting of 21 members. All members shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve at his pleasure for a term of not more than 4 years, with the exception of those whose membership on the Commission is mandatory under federal law. The Governor from time to time shall, with the advice and consent of the Senate, designate one of such members to serve as Chairman of the Commission. In making his appointments to the Commission, the Governor shall give due consideration to the following factors:

(a) State-local, urban-rural and geographic balance, as measured by incidence of crime; the distribution and concentration of criminal and juvenile justice system services; and the population of the respective areas;

(b) Criminal and juvenile justice system and private citizen input balance, by component and function.

(c) Any other criteria mandated by federal law.

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Sec. 4. [S.H.A. ch. 38, § 209–4] No Compensation—Expenses

Members of the Commission other than the Chairman shall serve without compensation. All members shall be reimbursed for reasonable expenses incurred in connection with their duties.

Sec. 5. [S.H.A. ch. 38, § 209–5] Executive Director—Employees

The Governor shall appoint an executive director of the Commission, with the advice and consent of the Senate. The Executive Director shall employ subject to the provisions of the Illinois Personnel Code such administrative, fiscal, clerical and other personnel as may be required.

Sec. 6. [S.H.A. ch. 38, § 209–6] Powers and Duties of Commission

The Commission shall serve as the official State Planning Agency for the State of Illinois and in that capacity is authorized and empowered to discharge any and all responsibilities imposed on such bodies by the federal Crime Control Act of 1973, as amended,[1] and the Juvenile Justice and Delinquency Prevention Act of 1974,[2] including their subsequent amendments or reenactments, if any. In furtherance thereof, the Commission has the powers and duties set forth in Sections 6.01 through 6.17.[3]

[1] 42 U.S.C.A. § 3701 et seq.
[2] 42 U.S.C.A. § 5601 et seq.
[3] Chapter 38, §§ 209–6.01 to 209–6.17.

Sec. 6.01. [S.H.A. ch. 38, § 209–6.01]

To develop annual comprehensive plans for the improvement of criminal justice and juvenile justice throughout the State, such plans to be in accordance with the federal Crime Control Act of 1973, as amended,[1] and the federal Juvenile Justice and Delinquency Prevention Act of 1974[2] including their subsequent amendments or reenactments, if any;

[1] 42 U.S.C.A. § 3701 et seq.
[2] 42 U.S.C.A. § 5601 et seq.

Sec. 6.02. [S.H.A. ch. 38, § 209–6.02]

To define, develop and correlate programs and projects for the State and units of general local government within the State or for combinations of such units or in combination with other states for improvement in law enforcement;

Sec. 6.03. [S.H.A. ch. 38, § 209–6.03]

To advise, assist and make recommendations to the Governor as to how to achieve a more efficient and effective criminal justice system;

Sec. 6.04. [S.H.A. ch. 38, § 209–6.04]

To act as a central repository for federal, State, regional and local research studies, plans, projects, and proposals relating to the improvement of the criminal justice system;

Sec. 6.05. [S.H.A. ch. 38, § 209–6.05]

To act as a clearing house for information relating to all aspects of criminal justice system improvement, and to encourage educational programs for citizen support of State and local efforts to make such improvements;

Sec. 6.06. [S.H.A. ch. 38, § 209–6.06]

To undertake research studies to aid in accomplishing its purposes;

Sec. 6.07. [S.H.A. ch. 38, § 209–6.07]

To establish priorities for the expenditure of funds made available by the United States for the improvement of the criminal justice system throughout the State;

Sec. 6.08. [S.H.A. ch. 38, § 209–6.08]

To apply for, receive, disburse, allocate and account for grants of funds made available by the United States pursuant to the federal Crime Control Act of 1973, as amended,[1] and the federal Juvenile Justice and Delinquency

Prevention Act of 1974,[2] including their subsequent amendments or reenactments, if any, and such other similar legislation as may be enacted from time to time;

[1] 42 U.S.C.A. § 3701 et seq.
[2] 42 U.S.C.A. § 5601 et seq.

Sec. 6.09. [S.H.A. ch. 38, § 209–6.09]

To insure that no less than the minimum percentage of all federal funds granted to the Commission for planning purposes and required by federal law to be made available to units of general local government or combinations of such units to enable them to participate in the formulation of an annual comprehensive State plan will in fact be passed through to such units; however, if all or a portion of such funds are not required for such participation, the Commission may expend the remainder in any fashion authorized by law;

Sec. 6.10. [S.H.A. ch. 38, § 209–6.10]

To establish the necessary State criminal and juvenile justice planning regions and provide guidance to the participating local units of government;

Sec. 6.11. [S.H.A. ch. 38, § 209–6.11]

To receive, expend and account for such funds of the State of Illinois as may be made available;

Sec. 6.12. [S.H.A. ch. 38, § 209–6.12]

To receive applications for financial assistance from units of general local government and combinations of such units; State agencies; and private organizations of all types, whether applying on their own behalf or on behalf of one or more of the governmental units specified above; and to disburse available federal and state funds to such applicant or applicants. All disbursals shall be made pursuant to an approved State plan for the improvement of criminal or juvenile justice and shall comply with all applicable State and federal laws and regulations. The Commission shall provide for distribution of funds with due regard for population and the incidence of crime within the several regions and communities of the State;

Sec. 6.13. [S.H.A. ch. 38, § 209–6.13]

To enter into agreements with the United States government which may be required as a condition of obtaining federal funds;

Sec. 6.14. [S.H.A. ch. 38, § 209–6.14]

To enter into contracts and cooperate with units of general local government or combinations of such units, State agencies, and private organizations of all types, for the purpose of carrying out the duties of the Commission imposed by this Act or by federal law or regulation;

Sec. 6.15. [S.H.A. ch. 38, § 209–6.15]

To adopt, promulgate, amend and rescind such rules and regulations not inconsistent with the provisions of this Act and federal law or regulation as it may deem necessary;

Sec. 6.16. [S.H.A. ch. 38, § 209–6.16]

To exercise all other powers that are reasonable and necessary to fulfill its functions under applicable federal law or to further the purposes of this Act;

Sec. 6.17. [S.H.A. ch. 38, § 209–6.17]

To report the progress of the work of the Commission on or before September 15 of each year to the Governor, the General Assembly, and other interested State and local agencies.

Sec. 7. [S.H.A. ch. 38, § 209–7] Disbursing Funds to Units of General Local Government—Matching Contributions

The Commission may disburse available federal and State funds to applicant units of general local government, or combinations of such units, only

after the benefiting unit or units of general local government involved have agreed to provide the funds necessary to match federal contributions to the extent required by federal law. Units of general local government are hereby authorized to make such agreements with the Commission and the federal government, and to make such regular or emergency appropriations as may be required to perform them. All such agreements shall be made by the governing authority of the affected unit or units, by and with the consent of the appropriating authority of each participating unit.

Sec. 8. [S.H.A. ch. 38, § 209–8] Units of General Local Government —Agreements for Funds

Units of general local government may apply for, receive, disburse, allocate and account for grants of funds made available by the United States government, or by the State of Illinois, particularly including grants made available pursuant to the federal Crime Control Act of 1973, as amended,[1] and the federal Juvenile Justice and Delinquency Prevention Act of 1974,[2] including their subsequent amendments or reenactments, if any; and may enter into agreements with the Commission or with the United States government which may be required as a condition of obtaining federal or State funds, or both.

[1] 42 U.S.C.A. § 3701 et seq.
[2] 42 U.S.C.A. § 5601 et seq.

Sec. 9. [S.H.A. ch. 38, § 209–9] Agreements for Cooperative Action by Units of General Local Government

Any two or more units of general local government may enter into agreements with one another for joint cooperative action for the purpose of applying for, receiving, disbursing, allocating and accounting for grants of funds made available by the United States government pursuant to the Crime Control Act of 1973, as amended,[1] and the Juvenile Justice and Delinquency Prevention Act of 1974,[2] including their subsequent amendments or reenactments, if any; and for any State funds made available for that purpose. Such agreements shall include the proportion and amount of funds which shall be supplied by each participating unit of general local government. Such agreements may include provisions for the designation of treasurer or comparable employee of one of the units to serve as collection and disbursement officer for all of the units in connection with a grant-funded program.

[1] 42 U.S.C.A. § 3701 et seq.
[2] 42 U.S.C.A. § 5601 et seq.

Sec. 10. [S.H.A. ch. 38, § 209–10] Regional Planning Units

(a) The Commission shall create or designate regional planning units to assist it in carrying out its activities. Every county within the State shall be contained within such a unit, all of which shall be constituted and shall operate in accordance with all pertinent federal laws and regulations.

(b) Regional planning units shall have the following powers and duties:

(1) To assess the needs of the criminal justice system of the counties and municipalities it serves, and to prepare an annual plan for the improvement of that system. The Commission shall consider such recommendations in preparing its annual comprehensive plan.

(2) To review and comment on all grant applications to the Commission from units of general local government or private organizations that would have a significant impact on the counties or municipalities it serves. The Commission shall consider such recommendations before deciding whether to award or deny such applications.

(3) To exercise such other powers and duties as may be assigned to them pursuant to federal law or regulation or Commission policy.

Sec. 11. [S.H.A. ch. 38, § 209–11] Legislative Advisory Committee

There shall be a Legislative Advisory Committee to the Commission. The Legislative Advisory Committee shall consist of 4 members of the House of Representatives, 2 appointed by the Speaker and 2 by the Minority Leader of

the House, and 4 members of the Senate, 2 appointed by the President and 2 by the Minority Leader of the Senate. Of the 2 members appointed by each appointing authority, one shall be from the membership of a Judiciary Committee and one from the membership of an Appropriations Committee of the house from which the appointments are made. Members of the Legislative Advisory Committee shall be appointed within 90 days after the effective date of this Act and in each odd numbered year thereafter. Members shall serve for terms expiring on July 1 of each odd-numbered year. Vacancies shall be filled in the same manner as the original appointment. A vacancy occurs when a member ceases to be a member of the house from which he or she was appointed or when he or she ceases to be a member of the Judiciary or Appropriations Committee, as the case may be, of that house.

The Legislative Advisory Committee shall choose from its membership a chairman and a secretary.

The Commission shall provide members of the Legislative Advisory Committee written notice postmarked 7 days prior to each regularly scheduled meeting of the Commission. Such written notice shall include the date, time and place of meeting and a copy of the agenda. Notice of any non-regularly scheduled or emergency meeting of the Commission shall be provided to the chairman of the Legislative Advisory Committee, who may attend or designate a committee member to attend.

The Legislative Advisory Committee shall meet from time to time as may be necessary to conduct its business and may meet jointly with the Commission at least twice annually on matters pertaining to improvements in the criminal justice system, including the impact of the Commission's funding policies on that system and the potential for improving law enforcement and criminal or juvenile justice through legislative action.

Sec. 12. [S.H.A. ch. 38, § 209–12] Initial Appointments to the Commission

The membership of the Commission shall be appointed and the chairman shall convene the first meeting of the Commission within 30 days after the effective date of this Act.

Sec. 13. [S.H.A. ch. 38, § 209–13] Supersedure of Illinois Law Enforcement Commission

The Commission created by this Act supersedes the Illinois Law Enforcement Commission heretofore created by Executive Order.

Within 90 days of the first meeting of the Commission, the Illinois Law Enforcement Commission heretofore created by Executive Order shall transfer to the Commission created by this Act its books, records, outstanding applications for federal funds, outstanding grants and grant applications and all other assets, liabilities and business in process; and said Illinois Law Enforcement Commission heretofore created by Executive Order shall thereafter cease to function in any capacity whatsoever as a State Planning Agency as described in the federal Crime Control Act of 1973, as amended.[1] The employees of the Commission created by this Act shall be selected in a manner consistent with the Illinois Personnel Code.[2]

[1] 42 U.S.C.A. § 3701 et seq.
[2] Chapter 127, § 63b101 et seq.

Sec. 14. [S.H.A. ch. 38, § 209–14] Construction of Act

This Act shall be liberally construed to achieve the purpose set forth in Section 1 of this Act.[1]

This Act shall in no respect be considered as a repeal of the provisions of any existing law of this State concerning law enforcement and criminal justice, but shall be construed as supplemental thereto.

In the event that any provision or requirement of this Act is found by a court to be in conflict with federal law or regulation, the Commission created by this Act may take all such actions as are necessary to conform its conduct

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to the dictates or requirements of the judgment of the court, any provision of this Act to the contrary notwithstanding. However, it shall report all instances where such actions are required to the Legislative Advisory committee within 10 working days of their occurrence.

[1] Chapter 38, § 209-1.

Sec. 15. [S.H.A. ch. 38, § 209.15] Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid, or if by a final determination of any court of competent jurisdiction any provision of this Act is found to violate the federal Crime Control Act of 1973, as amended,[1] or the Juvenile Justice and Delinquency Prevention Act of 1974 [2] as such Acts may be now or hereafter amended, the validity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

[1] 42 U.S.C.A. § 3701 et seq.
[2] 42 U.S.C.A. § 5601 et seq.

Sec. 16. [S.H.A. ch. 38, § 209-1 note] Effective Date.

This Act takes effect upon its becoming a law.

Approved and effective Sept. 20, 1977.

38 § 1003-5-1 DEPT. OF CORRECTIONS

Unified Corr. Code § 3-5-1

§ 1003-5-1. Master record file

(a) The Department shall maintain a master record file on each person committed to it, which shall contain the following information:

(1) all information from the committing court;

(2) reception summary;

(3) evaluation and assignment reports and recommendations;

(4) reports as to program assignment and progress;

(5) reports of disciplinary infractions and disposition;

(6) the parole plan;

(7) parole reports;

(8) the date and circumstances of final discharge; and any other pertinent data concerning the person's background, conduct, associations and family relationships as may be required by the Department. A current summary index shall be maintained on each file.

(b) All files shall be confidential and access shall be limited to authorized personnel of the Department. Personnel of other correctional, welfare or law enforcement agencies may have access to files under rules and regulations of the Department. The Department shall keep a record of all outside personnel who have access to files, the files reviewed, any file material copied, and the purpose of access. If the Department or the Parole and Pardon Board makes a determination under this Code which affects the length of the period of confinement or commitment, the committed person and his counsel shall be advised of factual information relied upon by the Department or Board to make the determination, provided that the Department or Board shall not be required to advise a person committed to the Juvenile Division any such information which in the opinion of the Department or Board would be detrimental to his treatment or rehabilitation.

(c) The master file shall be maintained at a place convenient to its use by personnel of the Department in charge of the person. When custody of a person is transferred from the Department to another department or agency, a summary of the file shall be forwarded to the re-

ceiving agency with such other information required by law or requested by the agency under rules and regulations of the Department.

(d) The master file of a person no longer in the custody of the Department shall be placed on inactive status and its use shall be restricted subject to rules and regulations of the Department.

(e) All public agencies may make available to the Department on request any factual data not otherwise privileged as a matter of law in their possession in respect to individuals committed to the Department.

P.A. 77-2097, § 3-5-1, approved July 26, 1972, eff. Jan. 1, 1973.

116 § 43.4 RECORDS

STATE RECORDS ACT [NEW]

§ 43.4 Title

This Act shall be known as "The State Records Act." 1957, July 6, Laws 1957, p. 1687, § 1.

§ 43.5 Definitions

For the purposes of this Act:

"Secretary" means Secretary of State.

"Record" or "records" means all books, papers, maps, photographs, or other official documentary materials, regardless of physical form or characteristics, made, produced, executed or received by any agency in the State in pursuance of state law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its successor as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the State or of the State Government, or because of the informational data contained therein. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in this Act.

"Agency" means all parts, boards, and commissions of the executive branch of the State government including but not limited to all departments established by the "Civil Administrative Code of Illinois," as heretofore or hereafter amended.

"Public Officer" or "public officers" means all officers of the executive branch of the State government, all officers created by the "Civil Administrative Code of Illinois," as heretofore or hereafter amended,[1] and all other officers and heads, presidents, or chairmen of boards, commissions, and agencies of the State government.

"Commission" means the State Records Commission.

"Archivist" means the Secretary of State. 1957, July 6, Laws 1957, p. 1687, § 2.

§ 43.6 Reports and records of obligation, receipt and use of public funds as public records

Reports and records of the obligation, receipt and use of public funds of the State are public records available for inspection by the public. These records shall be kept at the official place of business of the State or at a designated place of business of the State. These records shall be available for public inspection during regular office hours except when in immediate use by persons exercising official duties which require the use of those records. The person in charge of such records may require a notice in writing to be submitted 24 hours prior to inspection and may require that such notice specify which records are to be inspected. Nothing in this section shall require the State to invade or assist in the invasion of any person's right to privacy. Nothing in this Section shall be construed to limit any right given by statute or rule of law with respect to the inspection of other types of records.

Warrants and vouchers in the keeping of the State Comptroller may be destroyed by him as authorized in "An Act in relation to the reproduction and destruction of records kept by the Comptroller", approved August 1, 1949, as now or hereafter amended.[1]

1957, July 6, Laws 1957, p. 1687, § 3. Amended by P.A. 77-1870, § 1, eff. Oct. 1, 1972; P.A. 79-139, § 2, eff. Oct. 1, 1975.

§ 43.7 Right of access by public—Reproductions—Fees

Any person shall have the right of access to any public records of the expenditure or receipt of public funds as defined in Section 3[1] for the purpose of obtaining copies of the same or of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy. The photographing shall be done under the supervision of the lawful custodian of said records, who has the right to adopt and enforce reasonable rules governing such work. The work of photographing shall, when possible, be done in the room where the records, documents or instruments are kept. However, if in the judgment of the lawful custodian of the records, documents or instruments, it would be impossible or impracticable to perform the work in the room in which the records, documents or instruments are kept, the work shall be done in some other room or place as nearly adjacent as possible to the room where kept. Where the providing of a separate room or place is necessary, the expense of providing for the same shall be borne by the person or persons desiring to photograph the records, documents or instruments. The lawful custodian of the records, documents or instruments may charge the same fee for the services rendered by him or his assistant in supervising the photographing as may be charged for furnishing a certified copy or copies of the said record, document or instrument. In the event that the lawful custodian of said records shall deem it advisable in his judgment to furnish photographs of such public records, instruments or documents in lieu of allowing the same to be photographed, then in such event he may furnish photographs of such records and charge a fee of 35¢ per page when the page to be photographed does not exceed legal size and $1.00 per page when the page to be photographed exceeds legal size and where the fees and charges therefor are not otherwise fixed by law. 1957, July 6, Laws 1957, p. 1687, § 4.

THE DEPARTMENT OF LAW ENFORCEMENT AND THE DEPARTMENT OF CORRECTIONS

§ 55a. Powers and Duties of Department of Law Enforcement

The Department of Law Enforcement shall have power:

1. To exercise the rights, powers and duties which have been vested by law in the Department of Public Safety as the successor of the State Fire Marshal, deputy State Fire Marshal, inspectors and other officers and employees of the State Fire Marshal;

2. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to the State police", approved July 20, 1949, as amended;[1]

3. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to the establishment and operation of radio broadcasting stations and the acquisition and installation of radio receiving sets for police purposes," approved July 7, 1931, as amended;[2]

4. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to criminal identification and investigation," approved July 2, 1931;[3]

5. To establish and maintain a bureau of investigation which shall (a) investigate the origins, activities, personnel and incidents of crime and the ways and means to redress the victims of crimes, and study the impact, if any, of legislation relative to the effusion of crime and growing crime rates, and enforce the criminal laws of this State related thereto, (b) enforce all laws regulating the production, sale, prescribing, manufacturing, administering, transporting, having in possession, dispensing, delivering, distributing, or use of controlled substances and Cannabis, (c) employ skilled experts, scientists, technicians, investigators or otherwise specially qualified persons to aid in preventing or detecting crime, apprehending criminals, or preparing and presenting evidence of violations of the criminal laws of the State, (d) cooperate with the police of cities, villages and incorporated towns, and with the police officers of any county, in enforcing the laws of the State and in making arrests and recovering property, (e) apprehend and deliver up any person charged in this State or any other State of the United States with treason, felony, or other crime, who has fled from justice and is found in this State, and (f) conduct such other investigations as may be provided by law. Investigators within the bureau are conservators of the peace and as such have all the powers possessed by policemen in cities and sheriffs, except that they may exercise such powers anywhere in the State in cooperation with and after contact with the local law enforcement officials.

6. To establish and maintain a bureau of identification which shall (a) be a central repository and custodian of criminal statistics for the State, (b) procure and file for record photographs, plates, outline pictures, measurements, descriptions of all persons who have been arrested on a charge of violation of a penal statute of this State, (c) procure and file for record such information as is necessary and helpful to plan programs of crime prevention, law enforcement and criminal justice, (d) procure and file for record such copies of fingerprints, as may be required by law, of all persons arrested on charges of violating any penal statute of the state, (e) establish general and field crime laboratories, (f) register and file for record such information as may be required by law for the issuance of firearm owner's identification cards, (h) employ polygraph operators, laboratory technicians and other specially qualified persons to aid in the identification of criminal activity, (i) keep a record, as may be required by law, of all fires occurring in the State, together with all facts, statistics and circumstances, including the origin of the fires, and undertake such other identification, information, laboratory, statistical or registration activities as may be required by law.

Photographs, fingerprints or other records of identification so taken shall, upon the acquittal of a person charged with the crime or upon his being released without being convicted, be returned to him, except that nothing herein shall prevent the Department of Law Enforcement from maintaining all records of any person who is admitted to probation upon terms and conditions and who fulfills those terms and conditions pursuant to Section 410 of the "Illinois Controlled Substances Act",[4] enacted by the 77th General Assembly;

7. To establish and maintain a bureau of communications and information which shall (a) acquire and operate one or more radio broadcasting stations in the State to be used for police purposes, (b) operate a statewide communications network to gather and disseminate information for law enforcement agencies, (c) operate an electronic data processing and computer center for the storage and retrieval of data pertaining to criminal activity, (d) undertake such other communication activities as may be required by law.

8. To provide, as may be required by law, assistance to local law enforcement agencies through (a) training, management and consultant services for local law enforcement agencies, and (b) the pursuit of research and the publication of studies pertaining to local law enforcement activities.

9. To exercise the rights, powers and duties which have been vested in the Department of Law Enforcement and Director of the Department of Law Enforcement by "An Act in relation to control and regulation of controlled substances, and to make an appropriation therefor", approved July 5, 1957;[5]

10. To exercise the right, powers and duties which have been vested in the Department of Public Safety by the "Boiler Safety Act," approved August 7, 1951, as amended;[6]

11. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act in relation to the regulation of traffic", approved July 9, 1935, as amended;[7]

12. To exercise the rights, powers and duties which have been vested in the Department of Public Safety by "An Act relating to the acquisition, possession and transfer of firearms and firearm ammunition to provide a penalty for the violation thereof, and to make an appropriation in connection therewith", approved August 3, 1967;[8]

13. To enforce and administer such other laws in relation to law enforcement as may be vested in the Department;

14. To transfer jurisdiction of any realty title to which is held by the State of Illinois under the control of the Department to any other Department of the State Government or to the State Employees Housing Commission, or to acquire or accept Federal land, when such transfer, acquisition or acceptance is advantageous to the State and is approved in writing by the Governor;

15. With the written approval of the Governor, to enter into agreements with other departments created by this Act, for the furlough of inmates of the penitentiary to such other departments for their use in research programs being conducted by them.

For the purpose of participating in such research projects, the Department may extend the limits of the inmates' place of confinement, to whom there is reasonable cause to believe that he will honor his trust by authorizing him, under prescribed conditions, to leave the confines of the place unaccompanied by a custodial agent of the Department. The Department shall make rules governing the transfer of the inmate to the requesting other department having the approved research project, and the return of such inmate to the unextended confines of the penitentiary. Such transfer shall be made only with the consent of the inmate.

The willful failure of a prisoner to remain within the extended limits of his confinement or to return within the time or manner prescribed to the place of confinement designated by the Department in granting such extension shall be deemed an escape from custody of the Department and punishable as provided in Section 17 of "An Act in relation to the Illinois State Penitentiary", approved June 30, 1933, as now or hereafter amended.[9]

16. To provide investigative services, with all of the powers possessed by policemen in cities and sheriffs, in and around all race tracks subject to the "Illinois Horse Racing Act",[10] the "Illinois Harness Racing Act",[11] and the "Illinois Quarter Horse Racing Act".[12]

Amended by P.A. 76-428, § 1, eff. Jan. 1, 1970; P.A. 76-525, § 1, eff. Jan. 1, 1970; P.A. 76-1002, § 1, eff. Aug. 26, 1969; P.A. 76-2286, § 1, eff. July 1, 1970; P.A. 77-571, § 1, eff. July 31, 1971; P.A. 77-769, § 1, eff. Aug. 16, 1971; P.A. 77-2022, § 1, eff. July 11, 1972; P.A. 78-255, § 61, eff. Oct. 1, 1973.

RULES AND REGULATIONS GOVERNING INDIVIDUAL RIGHT TO ACCESS & REVIEW CRIMINAL HISTORY RECORD INFORMATION

EFFECTIVE March 16, 1976

REVISED: January 23, 1976

GENERAL

These rules and regulations are issued to comply with Title 28 of the Code of Federal Regulations, Judicial Administration, Chapter I - Department of Justice (Order No. 601-75), Part 20-Criminal Justice Information Systems effective June 19, 1975, in particular Subpart B, Section 20.21, Paragraph (g); and the Illinois Criminal Law and Procedure for 1975, Division V, Section 206. Reference should be made to the Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Crime Control Act of 1973, Sections 501 and 524 (b); 42 U.S.C. Section 3771 effective July 1, 1973, and related penalties for non-compliance of both Federal and State Legislation.

These rules and regulations pertain to one paragraph of the United States Department of Justice Rules and Regulations as cited above and are issued to implement Individual Right to Access and Review on or before March 16, 1976, and shall be filed with the Index Division of the Secretary of State, as provided in Chapter 127, Sections 263-268.1, Illinois Revised Statutes, and as such shall have the force of law pertaining to Chapter 38, Section 33.3 and 206 with respect to Agreements and/or Certifications pertaining to Criminal History Record Information collected, maintained, and disseminated by the State Central Repository and secondary dissemination of State Central Repository Criminal History Record Information by other State and Local Criminal Justice Agencies. This includes Criminal History Record Information collected from Federal, State, and Local Criminal Justice Agencies which is maintained and/or disseminated by State and Local Criminal Justice Agencies other than the State Central Repository.

These rules and regulations pertaining to Individual Right to Access and Review are written to comply with the spirit and intent of the Regulations and pending congressional legislation.

1.0 DEFINITIONS

1.1 CRIMINAL HISTORY RECORD INFORMATION (CHRI) means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and any disposition arising therefrom, sentencing, correctional supervision, and release. Fingerprint identification is not a necessary informational prerequisite to the collection, maintenance, and dissemination of Criminal History Record Information. CHRI can be construed to mean files maintained by criminal justice agencies containing a series of arrest reports and disposition information; CHRI is an arrest report, for example, with notations of formal transactions as a result of being processed through the criminal justice system. In short, CHRI generally means Transcript or "RAP SHEET" information, and does not pertain to source documentation of individual transactions, nor to investigative and intelligence information.

1.2 INFORMATION SUBJECT TO REVIEW means Criminal History Record Information concerning an individual pertaining to the fact, date, location, and results of each formal stage of the criminal justice process through which the individual passed. He or she is entitled to review such information to ensure that all such steps are completely and accurately recorded. Orginal criminal justice agency documents generated at each formal stage, intelligence and investigation information, and other substantive information compiled about the individual are not subject to access and review. In short, CHRI means a Transcript or "RAP SHEET", maintained by the State Central Repository or any history of arrests and formal criminal justice transactions pertaining to an individual maintained by a criminal justice agency.

1.3 CRIMINAL HISTORY RECORD TRANSCRIPT means the State Central Repository official document used to disseminate Criminal History Record Information to authorized criminal justice agencies upon request.

1.4 STATE CENTRAL REPOSITORY (SCR) means the Illinois Bureau of Identification authorized by Chapter 38, Section 206, Illinois Criminal Law and Procedure For 1975, effective July 2, 1931, and Chapter 127 Section 55a, Illinois Revised Statutes.

1.5 THE ILLINOIS DEPARTMENT OF LAW ENFORCEMENT shall be referred to as the Department herein.

1.6 INFORMATION SUBJECT TO CHALLENGE means an oral or written contention by an individual that his or her Criminal History Record is inaccurate and/or incomplete or illegally obtained and/or maintained. In order to challenge information the individual must provide a correct version, in writing, of his or her criminal history record, substantiated by legal documents if such documents exist or reasons why he or she believes his or her version to be correct.

1.7 REVIEWING AGENCY means a law enforcement criminal justice agency such as municipal police or county sheriff's office.

1.8 ADMINISTRATIVE REVIEW means an individual who challenges his or her criminal history record is entitled to have the record appropriately corrected, and if there is a factual controversy resolved against him or her, he or she is then entitled to a review of that decision by someone in the agency other than the person who made the decision not to correct the record.

1.9 ADMINISTRATIVE APPEAL means that an individual has the right to appeal when a criminal justice agency refuses to correct challenged information in the Administrative Review process to the satisfaction of the individual to whom the information relates. Appeals shall be submitted to, and processed by, the Criminal Justice Information Systems Council on forms provided for this purpose and made available to all reviewing agencies.

1.10 COMPUTERIZED CRIMINAL HISTORY (CCH) means computerized Criminal History Record Information maintained by the State Central Repository and its contents which are made available to authorized criminal justice agencies via the Law Enforcement Agencies Data System (LEADS).

3.0 APPLICABILITY

3.1 These rules and regulations are applicable to all criminal justice agencies collecting, maintaining, and disseminating manual and/or computerized Criminal History Record Information.

3.2 These rules and regulations are applicable to all criminal justice agencies generating original documents reflecting the facts and results of each formal stage of the criminal justice process through which an individual passed.

3.3 These rules and regulations are applicable to the Department of Law Enforcement responsible for the collection, maintenance, and dissemination of manual and computerized Criminal History Record Information, designated the State Central Repository by Statute.

3.4 These rules and regulations are applicable to the Criminal Justice Information Systems Council responsible for processing Administrative Appeals to the extent that they are not superseded by or in conflict with any rules or regulations issued by the Council.

4.0 RULES FOR ACCESS AND REVIEW

4.1 AVAILABILITY OF RULES AND REGULATIONS. The Department shall make these regulations available to all criminal justice agencies for dissemination to individuals being processed or already processed through the criminal justice system, institutions, and the media. Additionally, the Department shall make available pamphlets highlighting and illustrating the essence of the Right to Access and Review regulations.

4.2 LANGUAGE. The rules and regulations and pamphlets shall be printed in the English language to ensure communications within this State consistent with Chapter 38, Section 103-7, Illinois Revised Statute, 1975, Posting Notice of Rights.

4.3 FORMS. The Department shall make available to all criminal justice agencies forms and instructions necessary for carrying out the intent of the right to access and review Criminal History Record Information as defined in Section 2.0 of the Rules and Regulations.

4.4 PROCESSING SERVICES. The Department shall make available necessary services to criminal justice agencies by promptly responding to requests for access and review, challenges, and administrative reviews in accordance with time constraints contained herein and Right to Access and Review Procedure.

4.5 POINT OF REVIEW. State and local law enforcement agencies shall process requests for access and review of Criminal History Record Information through all stages of the process to their final disposition. If an individual requests access and review at the jurisdiction of residence of another jurisdiction's record (not the State Central Repository), the law enforcement agency in the jurisdiction of residency will process the review in accordance with this procedure through the State Central Repository as in any other case.

1.11 CRIMINAL JUSTICE INFORMATION SYSTEMS COUNCIL means a body created pursuant to Statute or Executive Order whose purpose is to resolve factual controversies arising from the Right to Access and Review process.

2.0 DEFINITION OF FORMS USED

2.1 REQUEST FOR ACCESS AND REVIEW CJIS-OPER-0105-12/75 (RAR). This form is used to initiate Access and Review procedures at a criminal justice agency. The contents of the form shall contain sufficient information to identify the requester and the facts related to the information requested for review. The Department of Law Enforcement shall provide Request for Access and Review forms to Reviewing Agencies with instructions for completing the same.

2.2 NOTICE OF REVIEW FORM CJIS-OPER-0106-12/75 (NOR). This form is used by Reviewing Agencies to notify individuals who have caused to be filed a Request for Access and Review that the information requested is available for review. The contents of the form shall contain sufficient information to identify the individual and the transaction referred to, and certain notices regarding re-identification and failure to answer the Notice. The Department of Law Enforcement shall provide Notice of Review forms to Reviewing Agencies with instructions for completing the same.

2.3 RECORD CHALLENGE FORM CJIS-OPER-0107-12/75. This form is used by the Reviewing Agencies to provide an instrument for recording the facts of a record being challenged. The contents of the form shall contain sufficient information to identify the individual and the transaction referred to, and adequate space shall be provided for the individual to record the facts of the challenge. The Department of Law Enforcement shall provide Record Challenge Forms to Reviewing Agencies with instructions for completing the same.

2.4 REQUEST FOR ADMINISTRATIVE REVIEW CJIS-OPER-0109-12/75 (RAR). This form is used by Reviewing Agencies to provide an instrument for an individual to file an Administrative Review. The contents of the form shall contain sufficient information to identify the individual, the transaction referred to, and a statement by the individual regarding the proposed corrections. The Department of Law Enforcement shall provide Request for Administrative Review forms to Reviewing Agencies with instructions for completing the same.

2.5 ADMINISTRATIVE APPEAL COMPLAINT FORM CJIS-OPER-0108-12/75. This form is used by Reviewing Agencies to provide an instrument for an individual to file an Administrative Appeal Complaint. The contents of the form shall contain sufficient information to identify the individual, the transaction referred to, and a brief statement by the individual regarding the facts of the complaint. The Criminal Justice Information Systems Council shall provide Administrative Appeal Complaint Forms to Reviewing Agencies or the individual directly, with instructions for completing the same.

4.6 ORIGINAL DOCUMENT AVAILABILITY. All criminal justice agencies will make original documents or copies available to the State Central Repository for the purpose of auditing information being challenged by an individual.

4.7 VERIFICATION METHOD. Fingerprinting, fingerprint classification, and classification master file search will be applied to establish the individual's positive identification to ensure accuracy in providing information to the individual.

4.8 LEGAL REPRESENTATIVE. Access and Review of an individual's Criminal History Record Information through his or her attorney or authorized agent of his or her attorney requires the presence of the individual for fingerprinting and fingerprint verification as stated in part 4.7 above.

4.9 TIMING.

a. State and local law enforcement agencies shall make available access and review services between the hours of 8:00 a.m. and 4:00 p.m. daily excepting Saturdays, Sundays, and legal holidays.

b. Requests for Access and Review shall be forwarded to the State Central Repository by the Reviewing Agency within 7 calendar days measured from the date the request was filed. A review shall take no longer than 2 hours.

c. The State Central Repository shall respond to Requests for Access and Review within 30 calendar days measured from the receiving date.

d. The Reviewing Agency shall notify the individual that the Transcript is available for review within 5 days measured from the time the Transcript was received from the State Central Repository.

e. Challenges shall be forwarded to the State Central Repository by the Reviewing Agency within 7 calendar days measured from the date the challenge was filed.

f. The State Central Repository shall respond to challenges within 30 calendar days measured from the receiving date. Corrections reported by the Reviewing Agency to the State Central Repository shall be verified against contributing agency records. The State Central Repository shall disseminate corrections to all agencies logged as having received the incorrect information, prepare a listing of non-criminal justice agencies which have received the information, and forward the corrected Transcript and non-criminal justice agency listing to the Reviewing Agency.

g. The Reviewing Agency shall notify the individual of the availability of the Challenge decision within 5 days measured from the date the information was received from the State Central Repository.

h. Requests for Administrative Review shall be forwarded to the Superintendent of the State Central Repository by the Reviewing Agency within 7 calendar days measured from the date the Request for Administrative Review was filed with the Reviewing Agency. Requests for Administrative Review shall be submitted by the individual to the Reviewing Agency within 60 days from the date that the individual is notified of the Challenge decision.

i. The Department shall respond to Requests for Administrative Review within 30 calendar days measured from the receiving date of the Request for Administrative Review.

j. The Reviewing Agency shall notify the individual of the availability of the Administrative Review decision within 5 days measured from the date the information was received.

k. Administrative Appeals shall be processed by the Criminal Justice Information Systems Council within 30 calendar days measured from the receiving date of filing the Administrative Appeal. Appeals to the Council shall be submitted within 60 days measured from the date the individual is notified of the Administrative Review decision.

4.10 FEES. No fees shall be charged by the State Central Repository for processing Right to Access and Review documents. Local criminal justice agencies may charge a fee for this service. The fee charged for review should not exceed actual costs of processing reviews and shall not exceed $10.

4.11 LACK OF FORMS. The lack of Right to Access and Review forms shall not be grounds for denying the Right to Access and Review of an individual's Criminal History Record Information by a Reviewing Agency.

4.12 MONITORING. The Department shall be responsible for monitoring the Right to Access and Review process and filing of reports reflecting monitoring statistics, characteristics of requests, challenges, administrative reviews, and the outcome of each stage of the process.

4.13 RECORDS OF REVIEW. The Department shall maintain files of all reviews and ensure updating of existing Criminal History Record Information in manual and computerized files, treating all such requests as an event followed by recorded transactions on all computerized and manually prepared Transcripts to ensure coordination with agencies receiving such records by subsequent dissemination. A copy of each Record of Review shall become part of the individual's file and will be subject to the Right to Access regulations stated herein.

4.14 LIST OF DISSEMINATIONS. Upon request, the individual shall be given during the review a list of all non-criminal justice agencies to whom the data has been disseminated.

4.15 REQUEST DENIED. Any individual denied the right to file a Request for Access and Review, Record Challenge, or Administrative Review by a Reviewing Agency may write the Superintendent of the Illinois Bureau of Identification for appropriate action and disposition. Any individual denied the right to file a request for Administrative Appeal may write to the Criminal Justice Information Systems Council for appropriate action.

4.16 CORRECTED CHRI. Criminal History Record Information corrected and/or completed by a criminal justice agency shall be disseminated to all agencies who have received this information, by the agency correcting and/or completing CHRI. Upon request, an individual whose record has been corrected shall be given the names of all non-criminal justice agencies to whom the data bas been given.

4.17 DISSEMINATION LOGS. State and Local criminal justice agencies shall maintain records of the identities of persons or agencies having access to criminal history information or to whom such information is disseminated, the date of access or dissemination, the purpose for which access or dissemination is requested, the identity of the individual to whom the information relates, and the items of information released. Dissemination logs shall be maintained and retained for at least three (3) years.

4.18 PRIMARY DISSEMINATION. The State Central Repository shall maintain primary dissemination logs as stated in Section 4.0, Part 4.17.

4.19 SECONDARY DISSEMINATION. Criminal justice agencies requesting and/or receiving CHRI (Transcript) from the State Central Repository, and/or compiling, maintaining and disseminating CHRI shall maintain secondary dissemination logs as stated in Section 4.0, Part 4.17.

4.20 LOCAL REVIEWS. A Request for Access and Review of specific local records of the agency of jurisdiction shall at all times be processed through the State Central Repository to ensure consistency, completeness, and accuracy of the Criminal History Record Information being reviewed.

4.21 CRIMINAL JUSTICE INFORMATION SYSTEMS COUNCIL. The Criminal Justice Information Systems Council shall make final decisions regarding the disposition of factual controversies arising from the Access and Review process.

INSTRUCTIONS
INDIVIDUAL RIGHT TO ACCESS AND REVIEW CRIMINAL HISTORY RECORD INFORMATION

EFFECTIVE: MARCH 16, 1976

REVISED: January 23,1976

GENERAL

The purpose of these instructions is to provide a medium for implementing the Individual Right to Access and Review Criminal History Record Information, Rules and Regulations effective March 16, 1976, in compliance with Rules and Regulations issued by the Law Enforcement Assistance Administration (LEAA); authorized by Title 28 - Judicial Administration, Chapter 1 - Department of Justice (Order No. 601-75), Part 20 - Criminal Justice Information Systems, Subpart B, effective June 19, 1975 and 42 U.S.C. Section 3771. Reference should be made to Chapter 38, Section 206 (Criminal Identification and Investigation), in particular Section 206-2, 206-2.1 (Mandatory Disposition Reporting, HB 1365, effective October 1, 1975), 206-5 and 206-7 (Records Not to be Made Public), Illinois Revised Statutes.

Individual Right to Access and Review Criminal History Record Information is applicable to all criminal justice agencies, including courts, corrections, prosecution, and police agencies. An individual may request or demand a particular criminal justice agency to make available his or her Criminal History Record Information maintained by the agency and/or the StateCentral Repository (Bureau of Identification, Chapter 38-206).

The LEAA Rules and Regulations pertain to RAP Sheet or Criminal History Transcript in the main, as maintained and disseminated to authorized criminal justice agencies on request. However, police agencies generally maintain records or jackets on individuals consisting of Arrest and Offense Reports, notations of normal transactions of the criminal justice process pertaining to an individual and such records are therefore criminal history record information. Master Name Files containing indexes to criminal history record information are also criminal history record information. Likewise, any other criminal justice agency maintaining a history of criminal events and transactions pertaining to an individual is subject to the Rules and Regulations.

On the other hand, a chronology of arrests related to a number of individuals or cases, as on a docket or "blotter", is not criminal history record information. However, a chronology of criminal justice events and transactions collected and maintained over time (history) pertaining to an individual is criminal history record information.

The Rules and Regulations issued by LEAA are interpreted to mean that original records of formal stages of the criminal justice process and investigative and intelligence information are not subject to access and review. A consequence of this rule is that investigative and intelligence information should not be commingled with Criminal History Record Information.

The following procedures will be adhered to by all criminal justice agencies involved in processing requests to Access and Review Criminal History Record Information as it pertains to Criminal History Record Information collected, maintained, and disseminated by the State Central Repository. It should be understood that the State Central Repository collects, maintains, and disseminates Criminal History Record Information and is not an agency generating original documents pertaining to an individual. Therefore, an individual who requests Access and Review of his or her Criminal History Record Information resulting in a factual controversy with the Reviewing Agency and the State Central Repository, may cause the initiation of a challenge involving a criminal justice agency of original record, resulting in an audit of original documents maintained by that criminal justice agency.

Consequently, when a challenge is made by an individual, the State Central Repository has a duty to search original documents to determine whether an error has been made in the information reflected on the Transcript (Rap Sheet), or that a particular transaction was not communicated to the SCR and the record is incomplete, or that the criminal event and/or record is being illegally maintained for one reason or another. Therefore, individual agencies must make original documents available for verification purposes when such transactions pertain to the criminal justice event or events being challenged.

1.0 DEFINITIONS OF FORMS USED

1.1 REQUEST FOR ACCESS & REVIEW FORM-CJIS-OPER-0105-12/75 (RAR). This is five part serialized form the same size as a standard fingerprint form, 8" by 8". The copy designation is: Copy 1, STATE CENTRAL REPOSITORY; Copy 2, REVIEWING AGENCY; Copy 3, COORDINATION TRAVELER; Copy 4, REQUESTER; Copy 5, FINGERPRINT-STATE CENTRAL REPOSITORY. The Requester's copy shall be backed with brief statements regarding his or her right to receive a copy of the CHRI, to challenge CHRI information, to file an Administrative Review, to file an Administrative Appeal, and forms to use in each stage of the right to access and review Criminal History Record Information.

This form is used to initiate Access and Review procedures at any police department or sheriff's office termed a Reviewing Agency at the time the request is initiated. The Department of Law Enforcement shall distribute RAR's as required by Reviewing Agencies and furnish detailed instructions for completing the same.

Minimum data contents shall be: State Central Repository address and telephone number, Reviewing Agency name and NCIC number, Reviewing Agency telephone number, Document Serial number, State Bureau of Identification number, Federal Bureau of Investigation number, Last, First, and Middle Name, Nickname, Aliases, Current Address, City of Birth, County of Birth, Date of Birth, Height, Weight, Sex, Race, Scars/Marks/Tattoos, Telephone Number, Fingerprints, Date Fingerprinted, Signature of Officer who rolled prints, Officer's Identification Number, Reviewing Officer's Name, Requester's signature, and if represented by counsel, Counselor's Full Name, Address, and Telephone Number. In addition, a place shall be provided to state purpose of Access and Review by the Requester.

1.2 NOTICE OF REVIEW FORM-CJIS-OPER-0106-12/75. This is a four part, 8½" by 11", form. Copy 1, STATE CENTRAL REPOSITORY; Copy 2, REQUESTER; Copy 3 & 4, REVIEWING AGENCY. The Requester's copy shall be backed with brief statements regarding his or her right to receive a copy of the CHRI, to challenge CHRI information, to file an Administrative Review, to file and Administrative Appeal, and forms to use in each stage of the right to Access and Review Criminal History Record Information.

Minimum data contents shall be: State Central Repository Address and Telephone Number, Reviewing Agency Name, NCIC Identification Number, Document Serial Number (transcribed clearly from the RAR), Individual's Full Name (name indicated on the RAR), Address, State Bureau of Identification Number, Date of Birth, Sex, Preprinted Statement of Review with places for Date, Time, and Place of Review, Reviewing Officer's Name and Identification Number, Agency's Telephone Number, and Notices pertaining to response time, specific documents, reschedule of review, date mailed, and copy designation information.

The Department of Law Enforcement shall distribute Notice of Review forms to Reviewing Agencies as required and furnish detailed instructions for completing the same. This form is used by Reviewing Agencies to notify individuals requesting Access and Review of Criminal History Record Information after receiving a response from the State Central Repository that the information requested is now available.

1.3 RECORD CHALLENGE FORMS-CJIS-OPER-0107-12/75. This is a four part, 8½" by 11", form. Copy designation is: Copy 1, STATE CENTRAL REPOSITORY; Copy 2, STATE CENTRAL REPOSITORY; Copy 3, REVIEWING AGENCY; Copy 4, CHALLENGER. The Challenger's copy shall be backed with brief statements regarding his or her right to receive a copy of the CHRI, to challenge CHRI information, to file an Administrative Review, to file an Administrative Appeal, and forms to use in each stage of the right to access and review Criminal History Record Information.

Minimum data contents shall be: State Central Repository address and telephone number, Reviewing Agency's Name and NCIC number, RAR Document serial number, State Identification number, Challenger's full name, Address, Telephone number, Date of Birth, Sex, Preprinted Instruction Narrative, Reviewing Officer's name and Identification number, Challenger's signature and date, Space for Challenger's Narrative and Document references, and Copy designation information.

The Department of Law Enforcement shall distribute Record Challenge forms to Reviewing Agencies as required and furnish detailed instructions completing the same. This form is used to record items of the challenge, to record what the individual believes to be a correct version of the information to be corrected, and to record documents and attachments substantiating the individual's challenge.

1.4 REQUEST FOR ADMINISTRATIVE REVIEW-CJIS-OPER-0109-12/75. This is a four part 8½" by 11", form. Copy designation is: Copy 1, SUPERINTENDENT, ILLINOIS BUREAU OF IDENTIFICATION; Copy 2, SAME AS COPY 1; Copy 3, REQUESTER; Copy 4, REVIEWING AGENCY. The Requester's copy shall be backed with brief statements regarding his or her right to receive a copy of the CHRI, to challenge CHRI information, to file an Administrative Review, to file an Administrative Appeal, and forms to use in each stage of the right to access and review Criminal History Record Information.

Minimum data contents shall be: Superintendent, State Central Repository address and telephone number, Reviewing Agency's name and NCIC number, State Identification number, Individual's full name, Address and Telephone number, Date of Birth, Notices and Instructions, Reviewing Officer's name and Identification number, Individual's signature, date filed, and space for narrative.

The Department of Law Enforcement shall distribute Request for Administrative Review forms to all Reviewing Agencies as required and furnish detailed instructions for completing the same. This form is used to record facts of the challenge and a statement relating to the factual controversy leading to this stage of review.

1.5 ADMINISTRATIVE APPEAL COMPLAINT FORM-CJIS-OPER-0108-12/75. This is a five part, 8½" by 11", form. Copy designation is: Copy 1, CRIMINAL JUSTICE INFORMATION SYSTEMS COUNCIL; Copy 2, CRIMINAL JUSTICE INFORMATION SYSTEMS COUNCIL; Copy 3, STATE CENTRAL REPOSITORY; Copy 4, INDIVIDUAL'S COPY; Copy 5, REVIEWING AGENCY.

This form and instructions shall be furnished to all reviewing agencies by the Criminal Justice Information Systems Council to be used for filing an Administrative Appeal.

Minimum data contents shall be: Criminal Justice Information Systems Council Address and Telephone number, Reviewing Agency's name and NCIC number, State Identification number, Individual's Full name, Address and Telephone number, Date of Birth, Notices and Instructions, Reviewing Officer's Name and Identification Number, Individual's signature, date filed, and space for narrative.

2.0 ACCESS AND REVIEW PROCEDURES

2.1 REQUEST FOR ACCESS AND REVIEW. Any individual who has or has had a criminal history record may file a Request for Access and Review of his or her criminal history record information at the law enforcement agency within his or her community. If the individual wishes to file the Request for Access and Review of records he or she believes are maintained by the law enforcement agency itself, the Request for Access and Review shall be processed in accordance with this procedure.

If the individual is filing the Request for Access and Review Criminal History Record Information maintained by the State Central Repository, then the Request for Access and Review shall be processed according to this procedure as if the agency's records were being requested for access and review.

If the individual wishes to file the Request for Access and Review at the law enforcement agency of jurisdiction of another law enforcement agency's criminal history record information, the request shall be processed in accordance with this procedure.

If an incarcerated individual wishes to file a Request for Access and Review of his or her Criminal History Record Information as defined by the Rules and Regulations he or she shall follow these procedures if, and only if the information being requested involved information maintained by the State Central Repository. Similarly, all other criminal justice agencies shall follow this procedure if the Request for Access and Review is filed at the agency itself if, and only if the request pertains to Criminal History Record Information maintained by the State Central Repository and maintained as a matter of record within the agency.

The above is based on the premise that the State Central Repository collects information from a multitude of criminal justice agencies involving an individual and therefore, in order to comply with the intent of the Rules and Regulations, it becomes incumbent upon criminal justice agencies to make sure that individual criminal history records subject to access and review are accurate and complete. In general, this procedure is directed toward law enforcement agencies who are more involved in maintaining CHRI.

2.1.1 The law enforcement agency shall furnish to the individual requesting access and review the appropriate forms and instructions for filling out the same, as provided by the Department of Law Enforcement. This law enforcement agency is termed the Reviewing Agency.

2.1.2 The Reviewing Officer shall complete the identification parts of the form and the requesting individual shall complete his or her part of the request as indicated on the form, aided by the Reviewing Officer.

2.1.3 The Reviewing Officer shall review the form for completeness, fingerprint the individual, clearly sign the form in the appropriate places, enter his or her identification number, enter the date, and have the Requester sign and enter the date. At this time, the Reviewing Officer shall collect the fee charged for processing the review, which should reflect the actual costs involved and shall not in any case exceed $10.

2.1.4 The Reviewing Officer shall separate the copies as indicated on each copy, give the requester his or her copy, and refer to the instructions on the reverse side of the form, indicating that the individual must bring a copy with him or her to a subsequent appointment when the information will be made available for review. The copies marked State Central Repository and Traveler Copy shall be placed in a prepaid return envelope (normally used for submitting fingerprint cards) and mailed to the State Central Repository. The Reviewing Agency's copy shall be filed in a Right to Access and Review Pending File.

2.2 The State Central Repository shall receive the request, enter the date received, and forward the RAR to the Quality Assurance Unit. The Quality Assurance Unit shall remove the individual's Criminal History Jacket from file and forward the fingerprint card to Identification. The file contents shall be audited against information on the request and any discrepancies noted. An inquiry shall be made of the Computerized Criminal History file and the contents audited with discrepancies noted. If discrepancies are discovered between the Repository manual file and the computer record, the computerized record shall be corrected after the RAR has been processed. If a

National Crime Information Center (NCIC) response is received showing additional transactions or transactions different in any way from those contained in State records a Transcript must be requested from the FBI.

If a transaction has been entered on the current Transcript indicating an arrest without disposition and 90 calendar days have elapsed, the State Central Repository shall obtain the status of this event to ensure record completeness.

2.2.1 When the FBI Transcript is received and dated, the State Transcript is updated to include transactions that have not been previously entered. Moreover, the RAR is considered a transaction and must be entered on the transcript using the serial number appearing on the Request for Access and Review form for event identification. Discrepancies involving the same transaction are identified and noted on the updated Transcript and the FBI Transcript stapled to it. Discrepancies noted when comparing the State file with the request for Access and Review are appropriately noted on the State Transcript. The RAR copies are updated with identification information as a result of processing the fingerprint card, and one copy is filed in a pending file that is appropriately marked. The Traveler Copy of the request is stapled to the Transcript for document identification purposes, dated when mailed, and mailed to the Reviewing Agency.

2.2.2 Notification shall be disseminated to all agencies who have received this record according to the dissemination log if discrepancies, errors, or omissions were discovered in the manual or computerized Criminal History file. Moreover, the record shall be "flagged", "THIS RECORD IS NOW BEING REVIEWED."

2.2.3 If the individual does not have a jacket on file and no identification is made, the State Central Repository's copy of the RAR and the Traveler are stamped "NO RECORD." The fingerprint card shall be destroyed and the RAR Traveler returned to the Reviewing Agency.

2.3 The Reviewing Agency shall, upon receipt of the CHRI Transcript, enter the date received on the Traveler Copy and Agency Copy. The documents are reviewed for completeness and the document serial number compared to the serialized copy on file at the Reviewing Agency and the document serial number on the updated Transcript to ensure that all documents and events pertain to the same transaction.

2.3.1 Within 5 calendar days after the date the Transcript is received, the Reviewing Agency shall notify the individual requesting Access and Review using the Notice of Review form. The document serial number of the RAR shall be entered accurately and legibly in the space provided on the Notice of Review form, the date, time, and place of review shall be specified, and with the name of the reviewing officer. The date mailed shall be entered on the notice and the third copy shall be mailed to the subject of review. Copy 1 is forwarded to the State Central Repository and Copy 2 is filed with the Reviewing Agency's copy of the RAR.

2.3.2 If the individual cannot be present at the scheduled time appearing on the notice, he or she shall contact the Reviewing Agency and establish a new review date (preprinted on the form). If the individual does not acknowledge within 30 calendar days measured from the date mailed, the review shall be considered complete, the Notice of Review shall be labelled "unacknowledged," and the Transcript, RAR Traveler, and Copy 1 of the Notice shall be promptly returned to the State Central Repository for permanent recording, and removal of the "flag" on the computer record completing the transaction and closing of the transaction on the Transcript. This does not mean that the same individual cannot file an RAR on some date in the future. However, the RAR event shall become a permanent record in the Computerized Criminal History file and a permanent entry and disposition on the CHRI Transcript.

2.3.3 If the individual does respond to the Notice, the Reviewing Agency, at the time of the review, shall compare the document serial number of the Requester's copy with the copy retained by the Reviewing Agency, the Traveler and the Transcript, all physical description and identifiers (driver's license, SSN, race, scars, marks, tattoos, etc.) to establish the individual's identity short of fingerprint comparison. At no time shall a review take place when the individual does not have his or her copy of the RAR.

2.3.4 If the individual does not have his or her copy of the RAR, the review is terminated and the subject told that he or she must get his or her copy of the RAR.

If he or she claims that the RAR copy is lost or misplaced, then another shall be completed and fingerprints rolled on the appropriate copy. The reviewing officer at this point of the procedure can exercise an option. He or she can decide to continue the review or exercise his or her option to process the second RAR through the State Central Repository, noting the facts, and returning the appropriate copies to the State Central Repository along with the Transcript and go through the procedure again. If he or she decides to go on with the review and is satisfied that he or she has identified the requester, then the review continues and the Reviewing Agency assumes the responsibility of identification and subsequent action that may take place. In this case, when the individual cannot produce his or her copy of the RAR, then a request for a copy of the CHRI shall be denied as well as notations of the Transcript contents.

2.3.5 The Reviewing Officer shall aid the individual to interpret the Transcript and notes of discrepancies, if any, between the RAR and source documents (Fingerprint cards, dispositions, etc.) maintained by the State Central Repository. Discrepancies should be clarified satisfactorily prior to continuation of the review, because this information must be returned to the State Central Repository at the conclusion of the review for record update. Special attention should be given to correct name (as many of the Repository's records reflect aliases), correct spelling, nicknames, date of birth and sex. The next step is to clarify any discrepancies between the State Central Repository Criminal History Record Information Transcript and, if it is attached, the FBI Transcript. The discrepancies must be reconciled with the individual, if at all possible, and the disposition of each discrepancy noted on the State Transcript. If the reviewing officer determines that the individual is not providing satisfactory answers about information recorded about him or her, or he or she is not sure, the review should be terminated and referred to the State Central Repository.

2.3.6 If the individual is satisfied that the CHRI is accurate and complete, he or she may be asked, but not required to sign the Transcript, RAR Traveler and Agency copies, in the place provided, stating the same. The RAR Traveler and Transcript are returned to the Repository and become part of the individual's records. The Agency copy is noted accordingly and filed. The computerized system maintained by the State Central Repository shall be updated showing the transaction completed with appropriate dates and ORI (Reviewing Agency) documented. Likewise, subsequent dissemination of the individual's CHRI shall show this transaction to notify all criminal justice agencies that they should update their records accordingly.

2.3.7 A copy of the Transcript shall be given to the individual upon demand if he or she states that a copy is required to challenge or correct the record. The Transcript is stripped of all personal identifiers prior to giving the individual a copy to prevent misuse, and only the RAR Traveler is returned to the State Central Repository. The individual may or may not file the Challenge Request at this point in the procedure. If he or she does not, then the individual shall be told that the Transcript and RAR copy must be presented at the time he or she decides to challenge; if he or she does decide to file a challenge, a Record Challenge form shall be provided to the individual by the Reviewing Agency.

2.4 RECORD CHALLENGE. The purpose of the Record Challenge is to specify exactly what information is being challenged. Also, a more comprehensive audit is made by the State Central Repository at this time to verify each transaction being challenged. The Reviewing Officer shall complete all information as designated on the form with emphasis on accurate recording of the document serial number appearing on the Request for Access and Review. The narrative portion of the form must clearly present the facts by the individual and be specific as to the facts about the specific data being challenged. The reviewing officer shall indicate clearly on the Transcript what data is in error or omitted or illegally maintained as challenged by the individual. The Challenge Request is reviewed to ensure completeness and clarity of signature and date. A copy of the Challenge Request is provided to the individual as indicated on the form, one copy is maintained by the Reviewing Agency along with the Agency's copy of the RAR. The State Central Repository copies (2) are attached to the Right to Access and Review Traveler Copy and Transcript and forwarded to the State Central Repository.

2.4.1 If the case arises whereby the individual does not make the challenge at the time of review, he or she shall be warned that in the event he or she may want to challenge the Transcript or CHRI record in the future, the RAR copy and the Transcript copy that he or she demanded must be returned to the Reviewing Agency to commence the challenge procedure for identification purposes. Additionally, the reviewing officer shall show the individual the Right to Access and Review rules on the back of the form.

2.5 The State Central Repository shall date stamp the Challenge Request received, inspect the documents for completeness, and forward the document to the Quality Assurance Unit for auditing. The RAR Copy is pulled from the file and a determination is made regarding what criminal justice agencies must be contacted either by a Field Analyst or by mail, specifying in detail what

record must be verified relative to accuracy, completeness, or legality of record maintenance. A copy of the Challenge Request shall be attached to the inquiry to show the fact that a challenge has been made in accordance with the procedure and for proper interpretation of what information is being challenged. A second copy is maintained in the RAR file. After the facts have been collected and analyzed by the Quality Assurance Unit of the SCR, a report is drafted for the Assistant Superintendent of Criminal Justice Information Services for review and a decision is made whether to accept or deny the Challenge Request. If the Challenge Request is denied, a letter is drafted stating why the Challenge is denied and sent to the Reviewing Agency, addressed to the individual. The Reviewing agency shall notify the individual, review the challenge denial, and inform him or her of his or her right to file an Administrative Review.

2.5.1 If the Challenge is accepted by the SCR, the Transcript is updated, the computerized and manual systems are updated, all criminal and non-criminal justice agencies logged as receiving this information are informed of the error or omission, and the corrected CHRI is disseminated to them. The manual records are corrected accordingly and a list of all non-criminal justice agencies receiving this data compiled.

The list of non-criminal justice agencies who received this information (already informed), the RAR Traveler, SCR Challenge Copy and Transcript are stapled together, the transaction is documented by the Quality Assurance Unit and the documents mailed to the Reviewing Agency.

2.6 The Reviewing Agency shall stamp date received, review the information, and generate a Notice of Review specifying date, time, and place of the review within 5 calendar days after receiving the Challenge decision. A copy of the Notice is filed, a copy is mailed to the individual, and one copy is mailed to the State Central Repository. When the individual arrives for the review, he or she is identified by presentation of his or her copies of the RAR and Record Challenge. The documents received from the SCR are reviewed with the individual, signed, dated on the SCR Challenge copy and Agency copy. Copies of the Transcript (stripped) and list of non-criminal justice agencies who received this information are given to him or her, if desired. The SCR Challenge Copy, RAR Traveler, and Transcript shall be returned to the Repository for recording. The Reviewing Agency's copy of the RAR is affixed to the Notice of Review and Challenge, filed at the Reviewing Agency, and maintained for one year.

2.6.1 If the individual elects not to file an Administrative Review, based upon a challenge denial, he or she may be asked, but not required, to sign and date in the appropriate place on the SCR's copy of the Challenge Request form, indicating that the individual is satisfied with the review. The RAR Traveler, Transcript, and SCR Challenge Request are returned to the Repository.

2.7 An individual who disagrees with a challenge denial by the State Central Repository may file an Administrative Review. The Reviewing Agency shall complete the identification part of the form and the individual must complete the narrative part of the form. Both the individual filing the Administrative

4.0 CORRECTION PROCEDURES

4.1 CORRECTION TO CHRI can take place at any stage of the Access and Review process or at any stage of the criminal justice process due to an agency discovering an error or omission, systematic auditing, or annual auditing. When errors and/or omissions are discovered by a local or state criminal justice agency (other than the State Central Repository), it shall correct its own records, disseminate the corrected record to all agencies who have received this individual's record, and report the corrections to the State Central Repository within 24 hours measured from the time the error was discovered.

4.2 THE STATE CENTRAL REPOSITORY shall correct both manual and computerized records, and disseminate the corrected CHRI to all agencies logged as having received this information including the National Crime Information Center (NCIC) within 24 hours after receiving this information.

4.3 STATE AND LOCAL CRIMINAL JUSTICE AGENCIES shall disseminate corrections to CHRI to both criminal and non-criminal justice agencies alike who have received this information, and disseminating logs shall reflect those agencies that have received corrected CHRI.

4.4 LOGGING shall pertain to both primary and secondary dissemination by all State and Local criminal justice agencies. Logs, whether computerized or manual, or both, must contain as a minimum the subject of CHRI disseminated, agency name or identifier, individual's name receiving CHRI, date information was released, and items of information released.

Computerized Criminal History Record Information (CCH) shall include this information as part of the individual's criminal record. Manual Criminal History Record Information shall have a logging card containing the same information as the computerized record until such time that all active criminal history records have been entered on the computerized system at the State Central Repository. Inquiries through the Computerized system, as well as agency validation, will be automatically logged to determine if the criminal justice agency is authorized to receive CHRI. Inquiries by administrative message, letter, or fingerprint card shall be logged on the computer by the State Central Repository or logged on the manual record contained in the individual's "jacket" if a computerized record does not exist or is not entered as a result of fingerprint card processing.

In a similar way, all State and Local criminal justice agencies shall follow this procedure if criminal history record information is collected, maintained, and disseminated.

4.5 MANDATORY INQUIRY. All criminal justice agencies collecting, maintaining, and disseminating CHRI shall query the State Central Repository prior to disseminating CHRI to ensure that records being disseminated are accurate and complete and that records are not being disseminated that are prohibited by the Regulations. This procedure will make primary and secondary logging procedures identical, making it relatively easy to audit the log periodically. For example, a police department having a requirement for dissemination to another authorized agency completes two important steps under mandatory inquiry, namely, (1) the query is logged with the Reviewing Agency's identifier tied to the subject's record and (2) the requesting agency ultimately receiving the CHRI through another agency is validated and the agency's identifier recorded in the log.

Review and the Reviewing Officer must sign and date as indicated on the form. The Reviewing Agency gives a copy of the form to the individual, keeps the Agency copy, and staples a copy to the RAR Traveler, SCR Challenge Record, a copy of the Challenge denial letter, and a copy of the Transcript and mails the documents to the Superintendent of the Bureau of Identification.

2.7.1 The Superintendent of the Bureau of Identification shall review the facts presented by the State Central Repository and the individual, as specified on the Administrative Review form, and shall decide in favor or against the individual.

A decision in favor of the individual requires a directive to the SCR to correct or complete the information being challenged if, and only if the error or incomplete record is not a source document residing at a criminal justice agency, and the agency of record has produced facts supporting the original records and refuses to alter it. Consequently, a decision in favor of the Challenge means a directed change in State Central Repository records only if a criminal justice agency of record refuses to alter an official document or if the SCR has not considered all of the facts related to the Challenge and has omitted an error.

If the State Central Repository has made an error, the Superintendent composes a letter explaining that the record has been corrected in accordance with the Challenge. This letter is sent to the Reviewing Agency along with the RAR Traveler and amended Transcript. If the individual agrees with the corrections, he or she must sign the SCR copy of the Challenge Request and the agency must update its records and the RAR Traveler. The Transcript and SCR Challenge Request copy are returned to the SCR. If the record cannot legally be changed, the Superintendent explains the facts in his or her letter and advises the individual that he or she has a right to file an Administrative Appeal on forms available at the local reviewing agency provided by the Criminal Justice Information Systems Council.

3.0 ADMINISTRATIVE APPEAL. The identification part of the Administrative Appeal form is completed by the Reviewing Officer, dated, and signed. The narrative is completed and signed by the individual. Two copies, as designated, are sent to the Criminal Justice Information Systems Council by the individual. One Copy is retained for file at the Reviewing Agency, one copy is given to the individual and one is sent to the State Central Repository with the Administrative Review letter (copy), RAR Traveler and Transcript.

3.1 The Criminal Justice Information Systems Council shall receive the Appeal, date stamp, and initiate a case for investigation. The case developed by the State Central Repository for Administrative Review shall be requested from the State Central Repository and inquiries initiated pertaining to the information being challenged as related to the agency or agencies of record. The decision made by the Criminal Justice Information Systems Council shall be considered final unless the individual desires to file a cause for civil action.

If the Criminal Justice Information Systems Council decides in favor of the individual, an order is issued to the agency or agencies of record specifying what data are to be corrected or completed. A copy of the order is sent to the State Central Repository for record correction and the corrected information is disseminated to all agencies which have received this information.

STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

SPRINGFIELD, ILLINOIS

EXECUTIVE ORDER Number 7 (1977)

CRIMINAL JUSTICE INFORMATION COUNCIL

Effective, modern law enforcement requires the collection, maintenance and dissemination of complete and accurate criminal justice information. This information is necessary to coordinate efforts among all component parts of the criminal justice system to investigate and prevent criminal activity. However, as important as sophisticated criminal justice records systems may be, they can never operate to infringe upon the individual citizen's constitutional right to privacy.

In order to balance the state's need for law enforcement data with the individual's right to privacy, a single public body is necessary to develop uniform policies with respect to criminal justice information. In that manner, we can insure that the data will be reviewed for accuracy and completeness, and that information retained in central repositories will be appropriately audited.

Therefore, in accordance with the provisions of the Federal Omnibus Crime Control and Safe Streets Act of 1968, as amended, and regulations issued under it, I order that:

1. There shall be a Criminal Justice Information Council composed of seven members appointed by the Governor to serve at his pleasure. One member shall be designated as chairman. The members shall receive no compensation for their services, but shall be reimbursed for actual expenses.

2. The Council shall have the following duties and responsibilities:

a. To promote the orderly development of criminal justice information and to provide uniform data for the more efficient management of law enforcement efforts;

b. To monitor the operation of existing criminal justice information systems in order to protect the constitutional rights and privacy of individuals about whom criminal history record information has been collected;

c. To provide an effective administrative forum for the protection of the rights of individuals concerning criminal history record information; and

d. To issue regulations, guidelines and procedures which insure the privacy and security of criminal history record information consistent with state and federal laws.

3. In order to fulfill these duties and responsibilities, the Council shall have the following powers:

a. To act as the sole administrative appeal body in the State of Illinois to conduct hearings and make final determinations concerning individual challenges to the completeness and accuracy of criminal history record information;

b. To act as the sole official body in the State of Illinois to conduct annual and periodic audits of the procedures, policies, and practices of the state central repositories for criminal history record information;

c. To provide policy direction to the Illinois Law Enforcement Commission's Statistical Analysis Center for criminal justice information by:

(1) advising in the appointment of the director of the Statistical Analysis Center;

(2) making policy recommendations on the program content of the Statistical Analysis Center;

(3) reviewing development plans for new statistical reporting systems;

(4) determining contents of reports in a manner consistent with state and federal guidelines;

d. To establish general policies concerning criminal justice information systems and promulgate rules, regulations and procedures as are necessary to the operation of the Council and to the uniform consideration of appeals and audits;

e. To advise and to make recommendations to the Governor and the General Assembly on policies relating to criminal justice information systems;

f. To direct all other agencies under the jurisdiction of the Governor to provide whatever assistance and information the Council may lawfully require to carry out its function; and

g. To exercise any other powers that are reasonable and necessary to fulfill the responsibilities of the Council under this Order and to comply with the requirements of federal law.

5. The Council shall begin operation on the date that this Order is filed with the Secretary of State.

JAMES R. THOMPSON
Governor

DATED:

BYLAWS OF THE ILLINOIS CRIMINAL JUSTICE INFORMATION COUNCIL

ARTICLE I - Purpose

The Illinois Criminal Justice Information Council (hereinafter call the "Council") shall have the duties and responsibilities set forth in Governor James R. Thompson's Executive Order Number 7 (1977), dated November 18, 1977.

ARTICLE II - Meetings

(a) Regular Meetings - Regular meetings of the Council shall be held at least four (4) times per year at a location to be determined by the Chairman and in conformance with the Illinois Public Meetings Act. At the discretion of the Chairman, any regular meeting may be cancelled or re-scheduled by written notice within a reasonable period prior to the scheduled meeting date. The time and place of all such meetings scheduled or re-scheduled shall be given to the Council members at least ten days prior to the meeting date. The agenda shall be sent to the Council members at least ten days prior to this meeting date.

(b) Special Meetings - Special meetings of the Council may be called at the discretion of the Chairman and in conformance with the Illinois Public Meetings Act or by a request signed by at least three of the Council members. An agenda, together with a notice of the time and place of any such meeting must be provided the Council members at least ten days prior thereto. Only matters contained in the agenda shall be voted at any special meeting. The Chairman may cancel a special meeting, provided that a meeting called by the Council members may be cancelled only with their consent.

(c) Quorum - In order to transact business legally, a majority of the Council members then holding office must be present at the initial roll call at the commencement of any regular or special meeting and they shall constitute a quorum. The Chairman, if a quorum is not present at the scheduled time of the meeting, may continue a roll call for the time not to exceed one hour, after which, if a quorum is still not then present, the meeting shall be adjourned. After a quorum is announced, Council business may continue to be transacted by the members remaining, provided, however, that no vote may be taken unless at least three of the members then holding office are present.

(d) Passage of Motions - After a quorum is announced a majority of those voting on a motion shall be sufficient to pass and make it the official act of the Council.

(e) Roll Calls - The members' roll shall be called upon all propositions, unless waived at the discretion of the Chairman and with the consent of the majority of Council members present.

(f) Participation in Meetings

1. Proxies - Proxies to vote shall not be permitted. A Council member must be physically present to record his or her vote and to present a motion or motions. Provided, however, Council members when unable to attend, may present signed and dated written communications which shall be distributed or read to Council members by the Chairman. A motion or motions may be made by other members concerning the contents of such communications.

2. Discussion - Non-Council members may not address the Council or otherwise participate in its meetings in any manner. The Chairman, however, may invite or allow non-members to address the Council unless there is an objection by a Council member, in which event there shall be a vote of the Council upon the matter.

3. Disruption - Anyone disrupting or otherwise interfering with the conduct of a meeting shall, at the discretion of the Chairman be removed from the place of meeting.

(g) Agenda - The Chairman shall prescribe the agenda for all Council meetings. In every agenda, except at special meetings, there shall be a category entitled "New Business" for the initation of matters not included in the agenda for that meeting.

(h) Attendance - The Chairman shall recommend to the Governor, which recommendation shall be advisory only, the dismissal of any Council member who misses three regular meetings during any 12 month period.

ARTICLE III - AD-HOC Committees

(a) Membership - The Chairman may create committees and shall appoint all committee chairmen, all of whom shall serve at his pleasure. Committee membership shall be consistent with the provisions of these Bylaws or be governed by the actions of the Chairman and/or the Council.

(b) Powers - The committees shall exercise those powers as are delegated to them by the Council, these Bylaws, and as are appropriate to their mission and responsibility. Committees shall also have such other power and duties as designated by the Chairman. Committee reports and recommendations shall be submitted to the Chairman, within the time prescribed, and they shall be advisory only.

(c) Rules - Committees shall be governed, to the extent practicable and possible, by these bylaws.

(d) Quorum - No business may be conducted by the committee unless a majority of the committee members are present.

(e) Meetings - Either the Chairman or the Committee chairman may schedule meetings upon seven days' written notice to the Committee members.

ARTICLE IV - Council Staff

The Council Staff shall assist the Council in performing its duties and fulfilling its responsibilities. Staff members shall perform the duties as requested or directed by the Council.

ARTICLE V - Administrative Appeals

(a) Purpose - The purpose of public administrative appeal hearings shall be to air the pertinent evidence in cases concerning individual access and review of criminal history record information, while affording due process to all parties. All parties shall have the right to appear with counsel, to be present and to participate. The right to participate shall include the rights to call, examine and cross-examine witnesses, and to introduce evidence into the record. Unless specified otherwise herein, all public administrative appeal hearings of the Council shall be governed by the State Administrative Review Act.

(b) Request for Administrative Appeal

1. An individual shall file with the Council a request for administrative appeal within 60 days of receipt of written notification that an administrative review has been completed by the reviewing authority of the state central repository. Such request must be submitted to the Council on an "Administrative Appeal Complaint Form," or, if such form is unavailable, a written request for administrative appeal may be substituted.

2. An Administrative Appeal Complaint Form shall, at a minimum, contain the reviewing agency's name and NCIC number, the State identification number, the individual's full name, address and telephone number, date of birth, notices and instructions, the reviewing officer's name and identification number, the individual's signature, the date filed, space for narrative explaining the specific item or items challenged as being incomplete or inaccurate, the exact correction(s) the individual would have the Council make, and a space where the individual may request an oral hearing.

3. Upon the request of the Council, the state central repository or reviewing criminal justice agency shall forward within 5 days any and all information relevant to the administrative appeal.

(c) Administrative Appeal Hearings

1. The Council, or, upon authorization by the Council, one or more of its members, shall conduct oral administrative appeal hearings.

2. All hearings shall be open to the public. However, hearings, or parts of hearings, may be closed to the public upon the request of the individual and at the discretion of the Council, to the extent necessary to protect the privacy of individuals or to ensure the security of criminal history record information, pursuant to federal or state law or regulations.

3. Within 30 days of receipt of a request for administrative appeal, the Council shall process that request. The Council shall notify the individual of the time, date, and place of the hearing.

4. Unless waived by the individual, a hearing must be conducted within 45 days of receipt of a request for administrative appeal, if the appeal is not designated to be heard by the full Council. When an appeal is designated to be heard by the full Council, it must be conducted at the next regularly scheduled meeting of the Council.

5. Unless waived by the individual, a hearing shall be conducted at a place within 250 miles of the place of residence of the individual or within 250 miles of the reviewing criminal justice agency, as determined by the Chairman.

6. At a hearing, the individual may appear with counsel, may present evidence, and may cross-examine witnesses.

7. All testimony taken at the hearing shall be under oath or affirmation.

8. An accurate record, which may be taken by tape recording or other appropriate means, shall be kept of the proceedings of any hearing at no expense to the parties. Upon prior written request to the Council, a party shall be entitled to be furnished at a reasonable charge the use of a stenographer and/or a transcript of the record. The record need not be transcribed or printed, except as herein provided, unless the Council shall so determine.

(d) Evidence

Technical rules of evidence shall not apply to hearings conducted. The rules and principles designated to ensure production of the most credible evidence available and subject testimony to test by cross-examination shall be applied where considered reasonably necessary by a majority of the members of the Council conducting the hearing. The Council may exclude irrelevant, immaterial or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties. An opportunity shall be given to refute facts and arguments advanced on either side of the issues.

(e) Findings and Orders

1. The Council may designate one or more of its members to issue findings and orders on behalf of the Council.

2. Unless waived by the individual, the Council shall issue written findings of fact and conclusions within 15 days from the date the administrative appeal is heard. The Council shall send written notice of the conclusions to the individual and notify him or her that the findings of fact will be available for review at the reviewing agency. The Council shall send written notice of the findings of fact and the conclusions to the reviewing agency and state central repository, when applicable.

3. If the criminal history record information in question is found to be incomplete, inaccurate, or improperly maintained, the Council shall order it to be appropriately purged, sealed, modified, or supplemented by explanatory notation. Such order shall be executed by the reviewing agency and state central repository, when applicable, within 24 hours of receipt of the order. The reviewing agency or the state central repository, when applicable, shall disseminate the corrected information to all agencies which have received this information.

(f) Sanctions

Any individual or agency failing to supply the Council with requested information, to testify upon request of the Council, or to comply with a lawful directive or order of the Council shall be subject to sanctions deemed appropriate by the Council, including, but not limited to, any of the following sanctions or combination thereof:

1. further proceedings concerning the appeal in question shall be stayed until the directive or order is obeyed;

2. a decision by default shall be rendered against the disobedient individual or agency;

3. designated facts shall be established in accordance with the claim of the party opposing the disobedient individual or agency;

4. the disobedient individual or agency shall be prohibited from introducing designated matters into the record.

ARTICLE VI - Audits

(Reserved)

ARTICLE VII - Amendment of Bylaws

These bylaws may be amended at any regular or special meeting by a majority of the members present, provided that the propsed amendment shall have been distributed at least ten days prior to such meeting.

ARTICLE VIII - Unenumerated Bylaws

All matters not enumerated in these bylaws shall be governed by the Illinois Public Meetings Act and/or an Act concerning administrative rules wherever and whenever applicable.

ADMINISTRATIVE REGULATIONS	SECTION NUMBER 844-A	PAGE NUMBER 1 of 5
STATE OF ILLINOIS DEPARTMENT OF CORRECTIONS ADULT DIVISION	EFFECTIVE DATE 9/30/77	
	SUPERSEDES A. R.	DATED:

SUBJECT: Individual Right to Access and Review of Criminal History Record Information

I. POLICY OF DEPARTMENT: To provide residents with access to and review of their criminal history record information (rap sheet).

II. EXPLANATION:

This Regulation is issued to comply with Title 28 of the Code of Federal Regulations, Judicial Administration, Chapter 1 – Department of Justice (Order No. 601-75), Part 20-Criminal Justice Information Systems effective May 20, 1975, in particular Subpart B, Section 20.21, Paragraph (g); and the Illinois Criminal Law and Procedure for 1975, Division V, Section 206. Reference should be made to the Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Crime Control Act of 1973, Sections 501 and 524 (b); 42 U.S.C. Section 3771 effective July 1, 1973, and related penalties for non-compliance of both Federal and State Legislation.

Criminal History Record Information (CHRI) means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and any disposition arising therefrom, sentencing, correctional supervision and release. Fingerprint identification is not a necessary informational prerequisite to the collection, maintenance and dissemination of Criminal History Record Information. CHRI can be construed to mean files maintained by criminal justice agencies containing a series of arrest reports and disposition information; CHRI is an arrest report, for example, with notations of formal transactions as a result of being processed through the criminal justice system. In short, CHRI generally means transcript or "rap sheet" information and does not pertain to source documentation of individual transactions, nor to investigative and intelligence information.

Beginning in March 1976, all persons—including residents—have the right to review copies of their criminal history record "rap sheet" from local criminal justice agencies, the State of Illinois, and federal FBI, sources. The following procedures shall be utilized for agency residents to obtain these rap sheets.

A. All institutions shall establish responsibility for rap sheet handling at one office location where records can be maintained regarding the rap sheet request and review process. The resident will thus have an institutional office where queries regarding the process can be channeled. The institution address with the responsible office noted on an attention line shall appear on all correspondence and forms associated with this procedure.

B. The institution shall provide residents, upon request, with a copy of the rap sheet, stripped of all identifying items maintained in the Master Record File. For residents to properly review all current information contained on a rap sheet and to challenge its content, the following procedures are hereby established. Institutional administrators shall ensure that *all* residents are informed of the procedures.

C. STATE RAP SHEET

1. Forms necessary:

a. The process of obtaining a rap sheet for review from the State of Illinois Bureau of Identification requires that all institutions maintain a stock of the following forms, which are to be ordered from the Illinois Bureau of Identification, 1035 Outer Park Drive, Springfield, IL 62706 (217) 782-7980:

(1) Request for Access and Review, form No. CJIS-OPER-0105-12/75
(2) Record Challenge, form No. CJIS-OPER-0107-12/75
(3) Requests for Administrative Review, form No. CJIS-OPER-0109-12/75
(4) Administrative Appeal Complaint, form No. CJIS-OPER-0108-12/75

b. The Request for Access and Review Form:

(1) To review a rap sheet, the resident makes a request to a staff member(s) designated by the institution. The staff member assists the resident in filling out the form, Items 4, 5, 6, 7, 8, 9, 21, 22, 23, 24, 29, 32 (if known), 36, 37, 38, 39, 40, 41, 42, 43 (if known) and 44 (indicate "to review record on file").

(2) The form is then forwarded by the designated staff member to the institution B of I where the remaining information is entered: Items 3 (if known), 5, 11, 12, 13, 14, 17, 18, 19, 20, 26, 27, 28, 29, 30 and 31. The resident is scheduled to be brought to the B of I for fingerprinting, or the prints may be taken at any other designated institution location.

(3) The form copies 1, 3, and 5 (fingerprint card), are to be mailed by the institution to the address indicated on the back of the form. Copy 2 is for institution records and copy 4 is to be given to the resident.

(4) When the rap sheet is returned to the institution by the Bureau of Identification, the resident will be given the document, stripped of all identifying items. The resident has the right to review this document with an attorney, either during an attorney visit, via the regular resident telephone program, or by mail.

(5) After an appropriate time for review, the resident shall be requested to sign and date line 45, 46 and 47 as the resident determines is correct. Should the resident feel the rap sheet is incorrect, procedures in "C" below shall be followed.

c. Record Challenge Form:

(1) To challenge an incorrect record, the resident is to complete this form, with necessary staff assistance.

(2) In the "challenger" block, indicate the resident's full name and register number, institution address with responsible office attention line, city, state, zip code, date of resident's birth, sex, race and designated responsible office telephone number.

(3) In "reviewing agency" address block is: Department of Law Enforcement, Bureau of Identification, Quality Assurance Unit, 515 East Woodruff Road, Joliet, Illinois 60432. Copies 1 and 2 shall be mailed by the institution to the Bureau of Identification; copy 3 is the institution's record, and copy 4 is to be given to the resident.

(4) In the "items challenged" block, the red instruction line is self-explanatory. Ensure that detailed information is entered with copies of supporting documents, if available.

(5) The resident is to sign and date the form, before mailing, where indicated.

(6) Within six weeks, the institution will receive, for the resident, a notice indicating whether the corrections requested were approved or denied. All non-criminal justice agencies which have received copies of the rap sheet record since March 16, 1976, will be notified of approved corrections.

(7) If corrections are denied, in whole or in part, the notice will provide a written explanation of the decision.

d. If the resident is not satisfied with the explanation of requested corrections which have been denied, there are two methods of appeal to a denial of corrections.

(1) The form, Request for Administrative Review, is the first method. This is handled in the same manner as outlined in Par. C1b of this regulation.

(2) If this appeal is denied, the form, Administrative Appeal Complaint, shall be filled out and submitted as outlined in Par. C1b of this regulation.

(a) The resident is entitled to be present at a hearing before a representative of the Illinois Criminal Justice Information Systems Council at this stage of the appeal process and may check the appropriate block of the form if this is desired.

D. FEDERAL (FBI) RAP SHEET

1. Residents are entitled to obtain a copy of the FBI rap sheet but must correspond directly with the FBI to obtain a copy of this document. Designated institution staff shall assist the resident in obtaining this document.

2. To obtain a copy of an FBI rap sheet:

   a. Submit a written request to: Federal Bureau of Investigation, Identification Division, Washington, D.C., 20537.

   b. Submit satisfactory identification:

      (1) Complete name, institution register number and FBI number, if known.

      (2) Date and place of birth.

      (3) Fingerprints (a set shall be prepared on a standard FBI fingerprint card form at the institution B of I for the resident).

   c. A charge of $5.00 is made by the FBI to obtain a copy of the FBI rap sheet [illegible] proof of indigency accompanies the request. Normal trust fund procedures shall be utilized in payment of this $5.00 charge and the institution is to ensure that the check accompanies the request. If the resident does not have the $5.00, this should be stated in the letter request for the rap sheet and then the FBI will process the request without charge.

3. If, after reviewing the rap sheet, the resident believes that it is incorrect or incomplete in any aspect and wishes changes, correction or updating of the discrepancy, he/she must write directly to the agency or law enforcement unit which submitted the information for inclusion on the rap sheet and request that the correction be made. The FBI identification division will make changes to the rap sheet only when they are supplied by the agency or law enforcement unit which initially initiated the entry of the information into FBI records.

E. RAP SHEETS FROM LOCAL CRIMINAL JUSTICE AGENCIES

1. Residents may also request permission to review and correct criminal history record information maintained by local criminal justice agencies by utilizing the procedure defined in C.

F. ORGANIZATIONS OR AGENCIES RECEIVING A COPY OF A RAP SHEET SINCE MARCH 16, 1976

1. A resident may request a listing of all organizations or agencies which have received a copy of his/her rap sheet since March 16, 1976. This can be accomplished at the same time a request for the state rap sheet is made by indicating in Block 44 that such list is requested. The resident may also individually write for this information by letter to the Bureau of Identification's Joliet Office.

YOU HAVE A RIGHT TO SEE A COPY OF YOUR CRIMINAL HISTORY RECORD*

Beginning March 16, 1976, every person has the right to see and correct information that the police, courts, correctional, and other agencies maintain. Included in your record is a list of what you have been arrested for, the dates you were arrested and released, and other details about each case.

WHY BOTHER?

The main reason you should want to review your record is to make sure that the information in it is correct. You will also want to be sure that your record includes only legally maintained information. *A record with incorrect information could keep you from getting a State or Federal job, from joining a branch of the armed services, or from obtaining a license in any of a number of different professions.* Judges, military recruiters, and various authorized employers can examine your record and they may be influenced by what they see. So you want to be sure that your record tells the true story of what happened, with the correct dates and facts.

IS IT HARD TO DO?

No. Reviewing your record is a very simple matter. First you must identify yourself and submit the proper form. Then you can look at your record and correct any errors that you find.

**also known as a "rap sheet"*

YOU HAVE A RIGHT TO SEE A COPY OF YOUR CRIMINAL HISTORY RECORD

- Beginning March 16, 1976
- The information in your record should be correct.
- If the information is not correct, you can have it changed.
- Review forms are available at your local police station.
- Read the instructions inside.

HOW TO SEE YOUR RECORD

1. IDENTIFY YOURSELF

Go to any police station or county sheriff's office in the state of Illinois between the hours of 8 A.M. and 4 P.M., Monday through Friday. Tell them that you want to see your criminal history record. You will be given a form to fill out called a *Request for Access and Review*. A copy will be yours to keep. You will have to show some form of positive identification such as a driver's license or birth certificate, and you will be fingerprinted. Your prints have to be compared with those in your file to make sure that no one claiming to be you sees your record.

A fee may be charged by the local law enforcement agency to cover the costs of processing your review. This fee will not be more than $10.

2. MAKE AN APPOINTMENT

Put your copy of your *Request for Access and Review* in a safe place. Within 6 weeks you will receive an appointment notice in the mail telling you that your record is available. If you cannot come at the appointed time, let them know within 25 days by telephoning or by returing the notice in the mail. You should write a date and time on the notice when you will be able to come to see your record.

3. BRING YOUR COPY

Be sure to bring your *Request for Access and Review* and some form of positive identification with you when you go to see your record. If you forget to bring your request form, you will not be able to see your record at that time. If you have lost this form, you will probably have to start over, at step (1).

If you have any official documents concerning your record, you should also bring them with you.

4. BRING YOUR ATTORNEY

You may bring your attorney when you go to review your record. In fact, if you want your attorney to review your criminal history record for you, he or she can complete this process once you have identified yourself properly, as in step (1).

5. INSPECT YOUR RECORD CAREFULLY

Read your record over very carefully. Make sure that the information about you is completely true. If you have any questions, ask the reviewing officer and he or she will be able to help you. If you ask for it, you will be given a list of the non-criminal justice agencies which have obtained copies of your record since March 16, 1976.

If there are any errors on your record, no matter how small, tell the reviewing officer about them immediately. For further instructions, see the next section called "IF THERE ARE ANY ERRORS."

If there are no errors on your record, you may be asked to sign a statement saying that your record is correct. Whether you choose to sign this statement or not, your review is now complete.

IF THERE ARE ANY ERRORS

6. REQUEST CORRECTIONS

If you find any errors, the reviewing officer will give you a form called a *Record Challenge*. List the correct information on this paper and explain in detail why these corrections should be made. A copy of your *Record Challenge* will be given to you to keep.

If you need a copy of your record, you can obtain one by asking the reviewing officer.

7. A DECISION WILL BE MADE

Within 6 weeks you will receive a notice in the mail. This notice will tell you whether your corrections were approved or denied.

If your corrections were approved, you should bring your *Request for Access and Review* and your *Record Challenge* forms to the police station and check to see that the corrections have been made properly. All the organizations which have received copies of your record since March 16, 1976 will be notified of these corrections.

At this time, you may be asked to sign a statement saying that your record is correct. Whether you choose to sign this statement or not, your review is now complete.

IF YOUR CORRECTIONS ARE DENIED

If your corrections are denied, in whole or in part, the notice you receive will tell you when you can see a written explanation of the decision. Bring both your *Request for Access and Review* and your *Record Challenge* to this appointment.

If you are not satisfied with the explanation you are given, there are two things that you can do. First you can apply for an Administrative Review. Application forms for this procedure are available at your local police station. If you are still not satisfied with the results after the Administrative Review has been completed, then you may file an Administrative Appeal with the Illinois Criminal Justice Information Systems Council. The Council's decision will be final unless you choose to file a civil suit in a court of law.

FOR FURTHER INFORMATION:

Contact your local police or county sheriff's office.

WARNING

IT IS A VIOLATION OF FEDERAL LAW (42 U.S.C. § 3771) TO USE THESE PROCEDURES FOR ANY PURPOSE OTHER THAN THE INDIVIDUAL REVIEW OF A CRIMINAL HISTORY RECORD, ANY EMPLOYER WHO REQUIRES SUCH INFORMATION AS A CONDITION OF EMPLOYMENT WILL BE SUBJECT TO A $10,000 FINE. VIOLATIONS SHOULD BE REPORTED TO THE UNITED STATES ATTORNEY'S OFFICE AND TO THE ILLINOIS CRIMINAL JUSTICE INFORMATION SYSTEMS COUNCIL IMMEDIATELY.

Illinois Criminal Justice Information Systems Council
Illinois Law Enforcement Commission
120 South Riverside Plaza
Chicago, Illinois 60606

CHAPTER 6—FAIR INFORMATION PRACTICES

4-1-6-1. Definitions. — As used in this chapter [4-1-6-1 — 4-1-6-9], the term:

(a) "Personal information system" means any recordkeeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject;

(b) "Personal information" means any information that describes, locates, or indexes anything about an individual or that affords a basis for inferring personal characteristics about an individual including, but not limited to, his education, financial transactions, medical history, criminal or employment records, finger and voiceprints, photographs, or his presence, registration or membership in an organization or activity or admission to an institution;

(c) "Data subject" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in a personal information system;

(d) "State agency" means every agency, board, commission, department, bureau or other entity of the administrative branch of Indiana state government, except those which are the responsibility of the auditor of state, treasurer of state, secretary of state, attorney general, superintendent of public instruction, and excepting the department of state police and the state-supported institutions of higher education. [IC 4-1-6-1, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-2. Collection of personal information by state agencies — Records required. — On or before July 1, 1978, any state agency maintaining a personal information system shall:

(a) Collect, maintain, and use only that personal information as is relevant and necessary to accomplish a statutory purpose of the agency;

(b) Collect information to the greatest extent practicable from the data subject directly when the information may result in adverse determinations about an individual's rights, benefits and privileges under federal or state programs;

(c) Collect no personal information concerning in any way the political or religious beliefs, affiliations and activities of an individual unless expressly authorized by law;

(d) Assure that personal information maintained or disseminated from the system is, to the maximum extent possible, accurate, complete, timely, and relevant to the needs of the state agency;

(e) Inform any individual requested to disclose personal information whether that disclosure is mandatory or voluntary, by what statutory authority it is solicited, what uses the agency will make of it, what penalties and specific consequences for the individual, which are known to the agency, are likely to result from nondisclosure, whether the information will be treated as a matter of public record or as confidential information, and what rules of confidentiality will govern the information;

(f) Insofar as possible segregate information of a confidential nature from that which is a matter of public record; and, pursuant to statutory authority, establish confidentiality requirements and appropriate access controls for all categories of personal information contained in the system;

(g) Maintain a list of all persons or organizations having regular access to personal information which is not a matter of public record in the information system;

(h) Maintain a complete and accurate record of every access to personal information in a system which is not a matter of public record by any person or organization not having regular access authority;

(i) Refrain from preparing lists of the names and addresses of individuals for commercial or charitable solicitation purposes except as expressly authorized by law;

(j) Make reasonable efforts to furnish prior notice to an individual before any personal information on such individual is made available to any person under compulsory legal process;

(k) Establish rules and procedures to assure compliance with this chapter [4-1-6-1 — 4-1-6-9] and instruct each of its employees having any responsibility or function in the design, development, operation or maintenance of such system or use of any personal information contained therein of each requirement of this chapter and of each rule and procedure adopted by the agency to assure compliance with this chapter;

(*l*) Establish appropriate administrative, technical and physical safeguards to insure the security of the information system and to protect against any anticipated threats or hazards to their security or integrity. [IC 4-1-6-2, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-3. Disclosure of information — Procedure. — Unless otherwise prohibited by law, any state agency that maintains a personal information system shall, upon request and proper identification of any data subject, or his authorized agent, grant such subject or agent the right to inspect and to receive at reasonable, standard charges for document search and duplication, in a form comprehensible to such individual or agent:

(a) All personal information about the data subject, unless otherwise provided by statute, whether such information is a matter of public record or maintained on a confidential basis, except in the case of medical and psychological records, where such records shall, upon written authorization of the data subject, be given to a physician or psychologist designated by the data subject;

(b) The nature and sources of the personal information, except where the confidentiality of such sources is required by statute; and

(c) The names and addresses of any recipients, other than those with regular access authority, of personal information of a confidential nature about the data subject, and the date, nature and purpose of such disclosure. [IC 4-1-6-3, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-4. Disclosure of information — Business hours — Fees for copies. — An agency shall make the disclosures to data subjects required under this chapter [4-1-6-1 — 4-1-6-9] during regular business hours. Copies of the documents containing the personal information sought by the data subject shall be furnished to him or his representative at reasonable, standard charges for document search and duplication. [IC 4-1-6-4, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-5. Correction of file — Notice to past recipients of information. — If the data subject gives notice that he wishes to challenge, correct or explain information about him in the personal information system, the following minimum procedures shall be followed:

(a) The agency maintaining the information system shall investigate and record the current status of that personal information;

(b) If, after such investigation, such information is found to be incomplete, inaccurate, not pertinent, not timely or not necessary to be retained, it shall be promptly corrected or deleted;

(c) If the investigation does not resolve the dispute, the data subject may file a statement of not more than two hundred [200] words setting forth his position;

(d) Whenever a statement of dispute is filed, the agency maintaining the data system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly mark that it is disputed and supply the statement of the data subject along with the information;

(e) The agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request;

(f) Following any correction or deletion of personal information the agency shall, at the request of the data subject, furnish to past recipients notification delivered to their last known address that the item has been deleted or corrected and shall require said recipients to acknowledge receipt of such notification and furnish the data subject the names and last known addresses of all past recipients of the uncorrected or undeleted information. [IC 4-1-6-5, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-6. Rights, benefits or privileges preserved. — The securing by any individual of any confidential information which such individuals may obtain through the exercise of any right secured under the provisions of this chapter [4-1-6-1 — 4-1-6-9] shall not condition the granting or withholding of any right, privilege, or benefit, or be made a condition of employment. [IC 4-1-6-6, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-7. Annual report of state agency. — Any state agency maintaining one [1] or more personal information systems shall:

(a) File a report on the existence and character of each system with the governor on or before September 1, 1977, and annually thereafter;

(b) Include in such report at least the following information:

(1) The name or descriptive title of the personal information system and its location;

(2) The nature and purpose of the system and the statutory or administrative authority for its establishment;

(3) The categories of individuals on whom personal information is maintained including the approximate number of all individuals on whom information is maintained and the categories of personal information generally maintained in the system including identification of those which are stored in computer accessible records and those which are maintained manually;

(4) All confidentiality requirements, specifically:

(i) Those personal information systems or parts thereof which are maintained on a confidential basis pursuant to statute;

(ii) Those personal information systems or parts thereof which are maintained on a confidential basis pursuant to a duly adopted regulation of the agency;

(iii) Those personal information systems or parts thereof which are maintained on a confidential basis pursuant to agency discretion; and

(iv) Those personal information systems or parts thereof which are a matter of public record;

(5) In the case of subsection (b) (4) (iii), the agency shall include detailed justification of the need for statutory or regulatory authority to maintain such personal information systems or parts thereof on a confidential basis and, in making such justification, the agency shall make reference to section 8 [4-1-6-8] of this chapter;

(6) The categories of sources of such personal information;

(7) The agency's policies and practices regarding the implementation of section 2 [4-1-6-2] of this chapter relating to information storage, duration of retention of information and elimination of information from the system;

(8) The uses made by the agency of personal information contained in the system;

(9) The identity of agency personnel, other agencies, and persons or categories of persons to whom disclosures of personal information are made or to whom access to the system may be granted, together with the purposes therefor and the restriction, if any, on such disclosures and access, including any restrictions on redisclosure;

(10) A listing identifying all forms used in the collection of personal information; and

(11) The name, title, business address and telephone number of the person immediately responsible for bringing and keeping the system in compliance with the provisions of this chapter [4-1-6-1 — 4-1-6-9]. [IC 4-1-6-7, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-8. Public access to information — Confidential files. — It is the intent of the general assembly that all state agencies subject to the provisions of this chapter [4-1-6-1 — 4-1-6-9] shall adhere to the policy that all persons are entitled to access to information regarding the affairs of government and the official acts of those who represent them as public servants, such access being required to enable the people to freely and fully discuss all matters necessary for the making of political judgments. To that end, the provisions of this chapter shall be construed to provide access to public records to the extent consistent with the due protection of individual privacy. Specifically it is the intention of this chapter that any records of an agency subject to this chapter which are to be maintained on a confidential basis after July 1, 1978, be so maintained on the basis of specific statutory authorization. [IC 4-1-6-8, as added by Acts 1977, P. L. 21, § 1, p. —.]

4-1-6-9. Report of governor to general assembly. — (a) Under the authority of the governor, a report shall be prepared, on or before December 1, 1977, and annually thereafter, advising the general assembly of the personal information systems, or parts thereof, of agencies subject to this chapter [4-1-6-1 — 4-1-6-9], which are recommended to be maintained on a confidential basis by specific statutory authorization because their disclosure would constitute an invasion of personal privacy and there is no compelling, demonstrable and overriding public interest in disclosure. Such recommendations may include, but not be limited to, specific personal information systems or parts thereof which can be categorized as follows:

(1) Personal information maintained with respect to students and clients, patients or other individuals receiving social, medical, vocational, supervisory or custodial care or services directly or indirectly from public bodies;

(2) Personal information, excepting salary information, maintained with respect to employees, appointees or elected officials of any public body or applicants for such positions;

(3) Information required of any taxpayer in connection with the assessment or collection of any income tax; and

(4) Information revealing the identity of persons who file complaints with administrative, investigative, law-enforcement or penology agencies.

(b) In addition, such report may list records or categories of records, which are recommended to be exempted from public disclosure by specific statutory authorization for reasons other than that their disclosure would constitute an unwarranted invasion of personal privacy, along with justification therefor. [IC 4-1-6-9, as added by Acts 1977, P. L. 21, § 1, p. ___.]

INDIANA CRIMINAL JUSTICE PLANNING COMMISSION AND AGENCY

4-23-4-1 [9-3801]. Acceptance of federal act.—The state of Indiana hereby accepts the provisions and benefits of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351) enacted by the Congress of the United States and approved on June 19, 1968, and the governor may administer the same and coordinate the activities of any and all departments and agencies of this state and its local units of government relating thereto. [Acts 1969, ch. 234, § 1, p. 863.]

4-23-4-2 [9-3802]. Purpose of act—Supplemental to existing law—Separability.—The state of Indiana hereby declares that the purpose of this act [4-23-4-1—4-23-4-18] is to evaluate state and local programs associated with the prevention, detection, and solution of crime, law enforcement and the administration of justice, and to encourage the preparation and adoption of comprehensive plans for the improvement and coordination of all aspects of law enforcement and criminal justice, and to stimulate the research and development of new methods for the prevention and reduction of crime. The act shall be interpreted so as to achieve said purposes. The act shall in no respect be considered as a repeal of the provisions of any existing law of this state concerning law enforcement and criminal justice unless specifically repealed herein, but shall be construed as supplemental thereto. If any provisions, section, subsection, subdivision, sentence, clause, phrase or word contained in this act shall, for any reason, be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgment or decision shall not affect the validity of the remaining portion of this act or any remaining part thereof; and it is hereby specifically declared that every other provision, section, subsection, subdivision, sentence, clause, phrase, or word hereof shall continue to be in full force and effect. [Acts 1969, ch. 234, § 2, p. 863.]

4-23-4-3 [9-3803]. Definitions.—Whenever used in this act [4-23-4-1—4-23-4-18], and for the purposes of this act unless the context clearly denotes otherwise:

(a) The term "criminal justice system" is inclusive of all activities pertaining to crime prevention or reduction and enforcement of the criminal law. It encompasses all aspects of law enforcement: the police, the courts, and the correction system as well as general programs for crime prevention and citizen action. It covers the prevention, detection, and investigation of crime; the apprehension of offenders; the problem of juvenile delinquency and the juvenile offender; the prosecution and defense of criminal cases; the trial, conviction, and sentencing of offenders; correction and rehabilitation, which includes imprisonment, probation, parole, and treatment.

(b) The term "agency" shall mean the Indiana criminal justice planning agency created by this act.

(c) The term "commission" shall mean the Indiana state criminal justice commission created by this act.

(d) The term "advisory council" shall mean the Indiana state criminal justice advisory council created by this act.

(e) The term "subcommittee" shall mean those subcommittees created by the governor pursuant to the provisions of this act.

(f) The terms "general local governmental units" and "local governmental units" shall mean any court of the state of Indiana except for the Appellate Court [Court of Appeals] of the state of Indiana and the Indiana Supreme Court, and any political subdivision of the state of Indiana, including any municipality, county, civil township, school township, civil incorporated city or town, any public school corporation and any other territorial subdivision of the state recognized or designated in any law, including judicial circuits. [Acts 1969, ch. 234, § 3, p. 863.]

Compiler's Note. The bracketed words "Court of Appeals" were inserted by the compiler as the act establishing the Appellate Court was repealed by Acts 1971, P. L. 427, § 8. See Const., art. 7, Rules A.P. 1 and 4 and IC 33-2.1-2-2 — 33-2.1-3-3 (Burns' §§ 4-7712 — 4-7717, 4-7731—4-7733) concerning establishment of Court of Appeals.

4-23-4-4 [9-3804]. Criminal justice planning agency — Created — Duties.—(a) There is hereby created the Indiana state criminal jus-

tice planning agency. It shall be the duty of this agency, with the approval of the Indiana state criminal justice commission, to:

(1) Develop a comprehensive statewide plan for the improvement of law enforcement throughout the state and plans to be in accordance with Part C of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, U.S. Pub. L. 90-351 [U.S.C. tit. 42, §§ 3731-3737], including its subsequent amendments, if any;

(2) Define, develop, and correlate programs and projects for the state and the units of general local government within the state or for combinations of such units or in combination with other states for improvement in law enforcement;

(3) Establish priorities for the improvement in law enforcement throughout the state;

(4) Apply for, receive, disburse, allocate and account for grants of funds made available by the United States government, particularly including grants made available pursuant to the Omnibus Crime Control and Safe Streets Act of 1968;

(5) Make such arrangements as it deems necessary to provide that at least 40 per cent of all federal funds granted to the agency pursuant to Part B, Title I, of the Omnibus Crime Control and Safe Streets Act of 1968 [U.S.C., tit. 42, §§ 3721-3725] will be available to units of general local government or combinations of such units to enable them to participate in the formulation of the comprehensive state plan. If such funds are not required for such local participation, then the agency may expend the funds for the development of the comprehensive state plan on dates fixed pursuant to federal law;

(6) Establish the necessary state criminal justice planning regions and provide guidance to the participating local units of government;

(7) Receive, expend and account for such funds of the state of Indiana as may be made available;

(8) Receive applications for financial assistance from units of general local governments and combinations of such units, and disburse available federal and state funds to the applicant or applicants pursuant to the state plan for the improvement of law enforcement and the federal law;

(9) Enter into agreements with the United States government which may be required as a condition of obtaining federal funds;

(10) Enter into contracts and cooperate with local governmental units and combinations of such units to carry out the duties of the agency imposed by this act [4-23-4-1—4-23-4-18];

(11) Adopt, promulgate, amend and rescind such rules and regulations not inconsistent with the provisions of this act as it may deem necessary;

(12) Report the progress of the work of the agency on or before September 15 of each year to the governor, the legislative council, and other interested state and local agencies. [Acts 1969, ch. 234, § 4, p. 863.]

4-23-4-5 [9-3805]. Criminal justice commission and criminal justice advisory council—Creation—Composition.—(a) There is hereby created an Indiana criminal justice commission, said commission to over-

see the work of the criminal justice planning agency as specifically noted in this act [4-23-4-1—4-23-4-18]. The commission members, unless otherwise noted, shall be appointed by the governor. The governor is to consider the representative nature of the federal and state act requirements in the selection of the commission and advisory council members. Particular attention is to be noted in the urban-rural and geographical composition so that a reasonable balance and regard for the incidence of crime and the distribution and concentration of criminal justice and law enforcement services in the state is present in the membership of both the commission and the advisory council. The commission is to consist of the following members who are to be selected as hereinafter described:

(1) one [1] person representing the governor, who shall serve as chairman of the commission;

(2) one [1] prosecuting attorney;

(3) three [3] mayors;

(4) one [1] person concerned with juvenile delinquency control, prevention and rehabilitation;

(5) one [1] representative of the Indiana state police department;

(6) one [1] representative of the Indiana attorney-general;

(7) one [1] judge of a court having general, criminal or juvenile jurisdiction;

(8) one [1] representative of the department of correction;

(9) one [1] sheriff;

(10) one [1] local probation officer;

(11) one [1] representative of the general public with an interest in the criminal justice system.

(b) There is hereby created an advisory council to assist the members of the criminal justice commission in an advisory nonvoting capacity. The advisory council is to consist of the following members who are to be selected as hereinafter described:

(1) one [1] representative of the judicial study commission or the commission for the administration of justice;

(2) two [2] members of the general assembly to represent the legislative council and to be selected by the presiding officer of the legislative council. These individuals shall be members of the legislative council's committees involved principally in criminal justice matters. The certification of these appointments by the legislative council shall be forwarded to the governor;

(3) one [1] member of the state civil rights commission;

(4) one [1] member representing the news media;

(5) one [1] member representing the field of general education;

(6) one [1] member representing the field of higher education with an interest in criminal justice and law enforcement;

(7) one [1] member representing the data processing division of the department of administration;

(8) one [1] member representing the state planning agency;

(9) one [1] chief of police;

(10) one [1] member representing the general public;

(11) the director of the law enforcement training board;

(12) the special agent in charge of the federal bureau of investigation field office covering the state of Indiana, subject to his approval to serve in such capacity. [Acts 1969, ch. 234, § 5, p. 863.]

4-23-4-6 [9-3806]. **Criminal justice commission—Terms—Advisory council—Terms.**—(a) All members of the criminal justice commission shall be appointed to the commission by the governor. Such appointments shall be made within thirty [30] days following the effective date [March 13, 1969] of this act. Four [4] of the initial appointments shall be made for a term of two [2] years, four [4] shall be made for a term of three [3] years; and five [5] for a term of four [4] years. Thereafter, all appointments shall be for terms of four [4] years or while maintaining the position held at the time of appointment to the commission whichever is the lesser period. Appointees to the commission shall serve as members of the commission only while holding the office or position in order that the representative nature of the commission outlined in section 5 [4-23-4-5] of this act may be maintained. Vacancies on the board, caused by the expiration of a term, termination of the office or position held at the time of appointment, or for any other reason, shall be filled in the same manner as the original appointments. A member appointed to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the member succeeded in the same manner as the original appointment. Members of the commission may be reappointed for additional terms. All members of the board shall serve, unless their services are terminated earlier for sufficient reason, until their successors have been appointed and qualified.

(b) Members of the advisory council who serve in such capacity by virtue of their office or position shall serve as members of the advisory council only during the term of said office or position as the case may be. All members appointed to the advisory council by the governor shall serve only during the pleasure of the governor. [Acts 1969, ch. 234, § 6, p. 863.]

4-23-4-7 [9-3807]. **Membership on commission or council not holding public office.**—Membership on the criminal justice commission or the advisory council shall not constitute holding a public office and members of the commission and advisory council shall not be required to take and file oaths of office before serving in such capacities. The commission and council shall exercise only those powers granted by this act [4-23-4-1—4-23-4-18]. No member of the commission or advisory council shall be disqualified from holding any public office or position by virtue of his appointment or membership on the commission or advisory council, nor shall any such person forfeit any office, position or employment by reason of an appointment pursuant to this act, notwithstanding the provisions of any state or local law, ordinance or city charter. [Acts 1969, ch. 234, § 7, p. 863.]

4-23-4-8 [9-3808]. **Commission and council—Meetings—Quorum.**—The commission and advisory council shall meet at least once a month and shall hold special meetings when called by the chairman of the commission. The chairman shall call the organization meeting of the board within ten [10] days after the last initial appointment to the commission shall have been made by the governor. The presence of eight [8]

members shall constitute a quorum for doing business. At least six [6] affirmative votes shall be required for the passage of any matter put to a vote of the commission. Advisory council members shall be entitled to participate in the business and deliberations of the commission, but only commission members shall be entitled to vote. The commission shall establish its own procedures and requirements with respect to place and conduct of its meetings. [Acts 1969, ch. 234, § 8, p. 863.]

4-23-4-9 [9-3809]. No compensation — Expenses. — The members of the commission and the advisory council shall serve without compensation except that actual expenses incurred shall be allowed to each member for attendance at regular or special meetings or when otherwise engaged in official business of the commission. [Acts 1969, ch. 234, § 9, p. 863.]

4-23-4-10 [9-3810]. Subcommittees — Responsibility. — The governor may by executive order establish such subcommittees as are necessary to effectuate the purposes of this act [4-23-4-1—4-23-4-18]. Such subcommittees shall be selected on a basis that will be representative of the requirements of the act and shall be given specific responsibility for a particular area of the criminal justice program. [Acts 1969, ch. 234, § 10, p. 863.]

4-23-4-11 [9-3811]. Commission to determine controversies.—The commission shall make the final determination on any controversy between the agency and any unit of local government on local program priorities and grants, subject to the procedures for review of commission action as required by the Omnibus Crime Control and Safe Streets Act of 1968. [Acts 1969, ch. 234, § 11, p. 863.]

Compiler's Note. For the Omnibus Crime Control and Safe Streets Act of 1968, see compiler's note, 4-23-4-1.

4-23-4-12 [9-3812]. Governor to request cooperation. — The governor is authorized to request the cooperation of any agency or person, public or private, state or federal, and any local unit of government or combinations thereof, in the administration of the provisions of this act [4-23-4-1—4-23-4-18]. [Acts 1969, ch. 234, § 12, p. 863.]

4-23-4-13 [9-3813]. Administrator, fiscal officer and personnel—Appointment—Salaries.—(a) The governor shall appoint an administrator to serve as the chief executive officer of the Indiana state criminal justice planning agency. The administrator shall serve for a term of four [4] years and at the will and pleasure of the governor. The salary for the administrator shall be established by the state budget agency subject to the approval of the governor.

(b) The governor shall appoint a fiscal officer and such additional professional and staff personnel as are necessary to meet the requirements of this act [4-23-4-1—4-23-4-18]. The salaries of such persons shall be established by the state budget agency subject to the approval of the governor.

(c) Persons, other than the administrator, shall be subject to the provisions of the State Personnel Act [4-15-2-1 et seq.] as amended and

any further revisions of said act that are made. [Acts 1969, ch. 234, § 13, p. 863.]

4-23-4-14 [9-3814]. Local governmental units — Agreements for funds.—Local governmental units may apply for, receive, disburse, allocate and account for grants of funds made available by the United States government, or by the state of Indiana, particularly including grants made available pursuant to the Omnibus Crime Control and Safe Streets Act of 1968 and this act [4-23-4-1—4-23-4-18], and may enter into agreements with the commission or the United States government which may be required as a condition of obtaining federal or state funds, or both. [Acts 1969, ch. 234, § 14, p. 863.]

Compiler's Note. For the Omnibus Crime Control and Safe Streets Act of 1968, see compiler's note, 4-23-4-1.

4-23-4-15 [9-3815]. Disbursing funds to local governmental units—Matching contributions. — The commission may disburse federal and state funds available pursuant to this act [4-23-4-1—4-23-4-18] to an applicant local governmental unit or units only after the local unit or units have agreed to provide the funds required to match federal contributions. General local governmental units are hereby authorized to make such agreements with the commission and the federal government. Such agreements shall be made by the governing authority of the local governmental unit or units by and with the consent of the appropriating authority of such unit. Said local governmental unit or units shall make such regular or emergency appropriations as may be required to perform such an agreement. [Acts 1969, ch. 234, § 15, p. 863.]

4-23-4-16 [9-3816]. Agreements for cooperative action by local governmental units.—Any two [2] or more local governmental units may enter into agreements with one another for joint or cooperative action for the purposes of applying for, receiving, disbursing, allocating and accounting for grants of funds made available by the United States government pursuant to the Omnibus Crime Control and Safe Streets Act of 1968, and for any state funds made available for that purpose. Such agreements shall include the proportion of the amount of required local funds which shall be supplied by each such local governmental unit. Such agreements may include provisions for the appointment of any officer or employee of one [1] of the units to serve as collection and disbursement officer for all of the units. [Acts 1969, ch. 234, § 16, p. 863.]

Compiler's Note. For the Omnibus Crime Control and Safe Streets Act of 1968, see compiler's note, 4-23-4-1.

4-23-4-17 [9-3817]. Recovery of funds from local governmental unit —Suit by attorney-general.—If any local governmental unit fails to appropriate or pay the funds which it has agreed to provide pursuant to this act [4-23-4-1—4-23-4-18], the commission shall refer the matter to the attorney-general of the state of Indiana, who may bring suit in the name of the state of Indiana to recover the amount which the local governmental unit has agreed to provide, for the benefit of the state or such local governmental unit or units as may be proper. [Acts 1969, ch. 234, § 17, p. 863.]

4-23-4-18 [9-3818]. **Authority to contract with consultants.**—Both the state criminal justice planning agency and the local governmental units receiving funds pursuant to this act [4-23-4-1—4-23-4-18] are hereby authorized to contract with and employ consultants, with the approval of the commission, to aid the said agency or units in performing functions authorized by this act. Consultants which may be employed or contracted with shall include, but not be limited to, individual and private corporations or companies, educational institutions including universities, colleges and an Indiana law enforcement training academy, and public officers and agencies. [Acts 1969, ch. 234, § 18, p. 863.]

CHAPTER 4—CRIMINAL INTELLIGENCE INFORMATION

5-2-4-1. **Definitions [effective October 1, 1977].** — As used in this chapter [5-2-4-1 — 5-2-4-7], unless the context otherwise requires:

(a) "Criminal history information" means information collected by criminal justice agencies or individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.

(b) "Criminal intelligence information" means information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity. "Criminal intelligence information" does not include criminal investigative information which is information on identifiable individuals compiled in the course of the investigation of specific criminal acts.

(c) "Criminal justice agency" means any agency or department of any level of government which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders. [IC 5-2-4-1, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-2. **Reference to intelligence file prohibited [effective October 1, 1977].** — Criminal intelligence information shall not be placed in a criminal history file, nor shall a criminal history file indicate or suggest that a criminal intelligence file exists on the individual to whom the information relates. Criminal history information may, however, be included in criminal intelligence files. [IC 5-2-4-2, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-3. **Grounds required for collecting and keeping information [effective October 1, 1977].** — Criminal intelligence information concerning a particular individual shall be collected and maintained by a state or local criminal justice agency only if grounds exist connecting the individual with known or suspected criminal activity and if the information is relevant to that activity. [IC 5-2-4-3, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-4. Review of retention of file [effective October 1, 1977]. — Criminal intelligence information shall be reviewed by the chief executive officer of the criminal justice agency at regular intervals to determine whether the grounds for retaining the information still exist and if not, it shall be destroyed. [IC 5-2-4-4, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-5. Political, religious or social information prohibited [effective October 1, 1977]. — No criminal justice agency shall collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, corporation, business or partnership unless such information directly relates to an investigation of past or threatened criminal acts or activities and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal acts or activities. [IC 5-2-4-5, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-6. Information confidential — Need to know [effective October 1, 1977]. — Criminal intelligence information is hereby declared confidential and may be disseminated only to another criminal justice agency, and only if the agency making the dissemination is satisfied that the need to know and intended uses of information are reasonable and that the confidentiality of the information will be maintained. [IC 5-2-4-6, as added by Acts 1977, P.L. 50, § 1, p. —.]

5-2-4-7. Unauthorized release of information — Penalty [effective October 1, 1977]. — Any person who knowingly and intentionally releases criminal intelligence information to an agency or person other than a criminal justice agency commits a class A misdemeanor. [IC 5-2-4-7, as added by Acts 1977, P.L. 50, § 1, p. —.]

PUBLIC PROCEEDINGS AND PUBLIC RECORDS—ANTI-SECRECY ACT

5-14-1-1 [57-601]. Construction of act.—Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principal [principle] that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of Indiana that all of the citizens of this state are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those whom the people select to represent them as public officials and employees.

To that end, the provisions of this act [5-14-1-1—5-14-1-6] shall be liberally construed with the view of carrying out the above declaration of policy. [Acts 1953, ch. 115, § 1, p. 427.]

5-14-1-2 [57-602]. Definitions. — As used in this chapter [5-14-1-1 — — 5-14-1-6]:

The term "public records" shall mean any writing in any form necessary, under or required, or directed to be made by any statute or by any rule or regulation of any administrative body or agency of the state or any of its political subdivisions. [Acts 1953, ch. 115, § 2, p. 427; 1977, P.L. 57, § 2, p. —.]

5-14-1-3 [57-603]. Right of inspection of public records.—Except as may now or hereafter be otherwise specifically provided by law, every citizen of this state shall, during the regular business hours of all administrative bodies or agencies of the state, or any political subdivision thereof, have the right to inspect the public records of such administrative bodies or agencies, and to make memoranda abstracts from the records so inspected. [Acts 1953, ch. 115, § 3, p. 427.]

5-14-1-5 [57-605]. Exceptions to chapter — Confidential re ;rds. — Nothing in this chapter [5-14-1-1 — 5-14-1-6] contained shall be construed to modify or repeal any existing law with regard to public records which, by law, are declared to be confidential. [Acts 1953, ch. 115, § 5, p. 427; 1977, P.L. 57, § 3, p. —.]

5-14-1-6 [57-606]. Violation of act by official — Separability. — (a) Any public official of the state, or of any political subdivision thereof, who denies to any citizen the rights guaranteed to such citizen under the provisions of section 3 [5-14-1-3] of this chapter is guilty of an infraction.

(b) Any citizen who has been denied the rights guaranteed under section 3 of this chapter, may bring a complaint to compel inspection. The citizen need not allege or prove any special damage different from that suffered by the public at large.

(c) Each section, subsection, sentence, clause and phrase of this chapter [5-14-1-1—5-14-1-6] is declared to be an independent section, subsection, sentence, clause or phrase, and the finding or holding of any section, subsection, sentence, clause or phrase to be unconstitutional, void or ineffective for any cause shall not affect any other section, subsection, sentence or part thereof. [Acts 1953, ch. 115, § 6, p. 427; 1971, P.L. 51, § 1, p. 264; 1977, P.L. 57, § 4, p. —.]

10-1-1-12 [47-857]. Bureau of criminal identification and investigation—Duties—Records.—It shall be the duty of the bureau of criminal identification and investigation to install and maintain complete systems for the identification of criminals, including the fingerprint system and the modus operandi system. The bureau shall obtain from whatever source procurable, and shall file and preserve for record, such plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements and such other information about, concerning or relating to any and all persons who have been or who shall hereafter be convicted of a felony or who shall attempt to commit a felony within this state, or who are well known and habitual criminals, or who have been convicted of any of the following felonies or misdemeanors: Illegally carrying, concealing or possessing a pistol or any other dangerous weapon; buying or receiving stolen property; unlawful entry of a building; escaping or aiding an escape from prison; making or possessing a fraudulent or forged check or draft; petit larceny; and unlawfully possessing or distributing habit-forming narcotic drugs. The bureau may also obtain like information concerning persons who have been convicted of violating any of the military, naval or criminal laws of the United States, or who have been convicted of the commission of a crime in any other state, country, district or province which, if committed within this state, would be a felony. The bureau shall make a complete and systematic record and index of all information obtained for the purpose of providing a convenient and expeditious method of consultation and comparison. [Acts 1945, ch. 344, § 12, p. 1622.]

10-1-1-13 [47-858]. Cooperation with sheriffs.—The bureau shall assist the respective county sheriffs of the state in the establishment of a system for making identification of criminals in each county, and shall give the respective sheriffs such assistance and instruction in the operation and use of such system as may be requested or as may be deemed necessary. The bureau may likewise give such instruction, advice and assistance to chiefs of police and other peace officers as may be deemed wise for the purpose of securing the establishment and operation of local identification systems. It shall be the duty of the respective county sheriffs, chiefs of police and other peace officers to cooperate with the bureau in establishing and maintaining an efficient and coordinating system of identification. [Acts 1945, ch. 344, § 13, p. 1622.]

10-1-1-15 [47-860]. Duty of penal institutions to furnish information.—It shall be the duty of the wardens of the state prison and the state reformatory, superintendent of the Indiana woman's prison and superintendent of the Indiana state farm, and of the chief administrative officer of every penal institution of the state, to make and furnish to the bureau, in such manner and according to such methods as the bureau may prescribe, photographs, fingerprints, modus operandi statements and other required identification of all prisoners who are confined in the respective institutions, at the time of the taking effect of this act [10-1-1-1—10-1-1-24], or who are hereafter confined therein. [Acts 1945, ch. 344, § 15, p. 1622.]

10-1-1-18 [47-863]. Duty of local officers to furnish information.—Every sheriff, chief of police, marshal, constable and every other law enforcement officer in this state shall make and furnish to the bureau, immediately upon request, fingerprints, photographs, comprehensive descriptions and such other data as to identification as the bureau may require of all persons who are arrested and who, in the judgment of the director of the bureau, are persons wanted for serious crime. This section shall not be construed to include violators of city, town or other local ordinances, or persons who are arrested for the commitment or alleged commitment of a misdemeanor unless the officer making the arrest or the director of the bureau has reason to believe that such violators are also implicated in the commission of a felony. [Acts 1945, ch. 344, § 18, p. 1622.]

CRIMINAL JUSTICE DATA DIVISION

10-1-2.5-1 [47-880]. Criminal justice data division—Creation.—A criminal justice data division is hereby established within the Indiana state police department. Such division shall be under the administrative control and jurisdiction of the superintendent of state police who is hereby empowered to staff it with such personnel as may be necessary for its efficient operation, and who shall also be empowered to adopt and promulgate administrative rules and regulations to carry out the purposes of this chapter [10-1-2.5-1—10-1-2.5-9]. [IC 1971, 10-1-2.5-1, as added by Acts 1971, P. L. 146, § 1, p. 612.]

Title of Act. The title of Acts 1971, P. L. 146, reads: "An act to amend IC 1971, 10-1, by adding a new chapter creating a criminal justice data division and providing for its control, administration and operation." In force September 2, 1971.

10-1-2.5-2 [47-881]. Purposes of division.—It shall be the purpose of the criminal justice data division to utilize the most current equipment, methods and systems for the rapid storage and retrieval of criminal justice data necessary for an effective criminal justice system within the state of Indiana. The superintendent shall be authorized to hire consultants to advise him in the most efficient means of establishing, funding and maintaining said criminal justice data system with the ultimate purpose in mind of extending the services and benefits of such a system to all governmental agencies of the state and its political subdivisions having a need for such data. In addition, the criminal justice data division shall be organized and administered to fulfill the following specific purposes:

(1) To inform the public and responsible governmental officials as to the nature of the crime problem, its magnitude and its trend over time;

(2) To measure the effects of prevention and deterrence programs, ranging from community action to police patrol;

(3) To find out who commits crimes by age, sex, family status, income, ethnic and residential background, and other social attributes, in order to find the proper focus of crime prevention programs;

(4) To measure the workload and effectiveness of all agencies of the criminal justice system, both individually and as an integrated system;

(5) To analyze the factors contributing to success and failure of probation, parole and other correctional alternatives for various kinds of offenders;

(6) To provide criminal justice agencies with comparative norms of performance;

(7) To furnish baseline data for research;

(8) To compute the costs of crime in terms of economic injury inflicted upon communities and individuals, as well as assess the direct public expenditures by criminal justice agencies;

(9) To project expected crime rates and their consequences into the future for more enlightened government planning. [IC 1971, 10-1-2.5-2, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-3 [47-882]. Duties—Reports—Nature of data to be collected.—The criminal justice data division, under the supervision and direction of the superintendent, and in accordance with the rules and regulations promulgated pursuant to this chapter [10-1-2.5-1—10-1-2.5-9] shall: (1) collect data necessary for the accomplishment of the purposes of this chapter from all persons and agencies mentioned in section 4 [10-1-2.5-4]; (2) prepare and distribute to all such persons and agencies, forms to be used in reporting data to the division, these forms also to provide for items of information needed by federal bureaus or departments engaged in the development of national criminal statistics; (3) prescribe the form and content of records to be kept by such persons and agencies to insure the correct reporting of data to the division; (4) instruct such persons and agencies in the installation, maintenance and use of records and equipment and in the manner of reporting to the division; (5) tabulate, analyze and interpret the data collected; (6) supply data, upon request, to federal bureaus of departments engaged in collecting and analyzing national criminal statistics; and (7) annually present to the governor, on or before July 1, a printed report containing the criminal statistics of the preceding calendar year; and present such other times as the superintendent may deem necessary or the governor may request, reports on public aspects of criminal statistics in a sufficiently general distribution for public enlightenment.

No data may be obtained by the division under the provisions of this chapter except that which is a public record and all laws regulating privacy and/or restricting use of such data shall be applicable to any data collected.

The criminal justice data division may accept data and reports from agencies other than those required to report herein when such data and reports are consistent with the purpose of this chapter. [IC 1971, 10-1-2.5-3, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-4 [47-883]. Duties of agencies required to report to division—Relief from liability.—When requested by the division, any public official or public agency dealing with crime or criminals or with delinquency or delinquents shall: (1) install and maintain records

needed for reporting data required by the division; (2) report to the division, as and when prescribed, all data requested; (3) give the accredited agents of the division access to such records for the purpose of inspection; and (4) cooperate with the division to the end that its duties may be properly performed.

No official required under this chapter [10-1-2.5-1—10-1-2.5-9] to furnish reports, information or statistics to the criminal justice data division and no person employed by such official, shall be subject to liability in any action arising out of his having furnished such information in a manner as may be required by this chapter or the rules and regulations promulgated pursuant thereto. [IC 1971, 10-1-2.5-4, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-5 [47-884]. **Division's equipment to be compatible with similar agencies.**—Insofar as is practicable the equipment methods and systems used by the criminal justice data division shall be compatible with those used by similar agencies in other states and the federal government so that data necessary for interstate, national and international criminal justice may be readily available. [IC 1971, 10-1-2.5-5, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-6 [47-885]. **Administrative advice from other agencies.**—In the administration of the criminal justice data division created by this chapter [10-1-2.5-1—10-1-2.5-9], the superintendent shall have the advice and assistance of the criminal justice commission and advisory council and the criminal justice planning agency, as created by law. [IC 1971, 10-1-2.5-6, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-7 [47-886]. **Rules and regulations—Criminal justice advisory committee—Composition of committee—Appointment of members.**—The superintendent shall promulgate rules and regulations necessary to accomplish the purposes of this chapter [10-1-2.5-1—10-1-2.5-9] and in the formulation of such rules and regulations, he shall have the advice and assistance of a criminal justice advisory committee which shall consist of the following persons or their designated representatives: the superintendent of state police who shall act as chairman; the attorney-general; the executive director of the criminal justice planning agency; the commissioner of corrections; one [1] county sheriff serving in his second or subsequent term of office; one [1] chief of police with two [2] or more years experience as chief; one [1] prosecuting attorney in his second or subsequent term of office; one [1] judge of a court of general criminal jurisdiction; the executive director of the law enforcement training academy; and a criminologist or forensic scientist. All members of said advisory council shall be appointed by the governor on a nonpartisan basis and shall serve at the pleasure of the governor. Such service shall be without compensation except per diem as provided by law. It shall be the duty of said committee to meet as often as is deemed necessary by the superintendent, for the purpose of formulating or revising rules and regulations for the statewide operation of the criminal justice data division. [IC 1971, 10-1-2.5-7, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-8 [47-887]. **Annual report—Periodic report.**—The annual report of the division shall be organized, insofar as is practicable, so as

to reflect the purposes enumerated in sec. 2 [10-1-2.5-2]. The superintendent shall so interpret such statistics and so present the annual report that it may be of value in guiding the legislature and those in charge of the apprehension, prosecuting and treatment of criminals and delinquents, or those concerned with the prevention of crime and delinquency. In addition to the annual report required herein, the division shall, within the limits of time and manpower, comply with all reasonable requests for periodic reports and analysis of data as shall be made by any officer or agency required to report data, and which is necessary for the proper performance of the duties of such office or agency. [IC 1971, 10-1-2.5-8, as added by Acts 1971, P. L. 146, § 1, p. 612.]

10-1-2.5-9 [47-888]. Neglect or refusal to comply with requests for data—Denial of benefits of system—Penalties for fraudulent return.— It is the intent of this chapter [10-1-2.5-1—10-1-2.5-9] to provide information and data with reference to the total criminal justice system that will be equally beneficial to all officers, agencies and components of said system so that each may better perform his or its respective duties for the over-all improvement of criminal justice. Rules and regulations adopted pursuant to this chapter shall be drafted so as to express this intent. Any public official required by said rules and regulations to report to the division, who neglects or wilfully refuses to comply with the requests of the superintendent for such information or data, or with the governing records and systems and equipment and their maintenance shall, at the discretion of the director of the criminal justice planning agency, be denied the benefits of the system until meeting minimum compliance with said regulations. Any official who knowingly makes, or causes to be made, a fraudulent return of information to the division, shall be subject to the penalties for the crime of official misconduct or perjury, as applicable to the act committed. [IC 1971, 10-1-2.5-9, as added by Acts 1971, P. L. 146, § 1, p. 612.]

CHAPTER 8—RETURN OF FINGERPRINTS AND PHOTOGRAPHS

35-4-8-1. Return by law-enforcement agency — Exceptions [effective October 1, 1977]. — When an individual is arrested but no criminal charges are preferred against the individual, or when the criminal charges preferred against the individual are all dismissed because of mistaken identity, or no crime in fact having been committed, or the absence of probable cause, the law-enforcement agency shall, when requested in writing by the individual and within sixty [60] days of such request, destroy or deliver to the individual any fingerprints or photographs of the individual taken as a result of the arrest and within the agency's custody or possession. However, if the individual has a record of prior arrests or if any additional criminal charges are pending against the individual, then the fingerprints and photographs shall not be destroyed or returned to the individual. The law-enforcement agency shall inform the individual of the provisions of this section in time for him to utilize its provisions. [IC 35-4-8-1, as added by Acts 1977, P.L. 337, § 1, p. —.]

35-4-8-2. **Return of copies forwarded to state agencies, other states, or the United States [effective October 1, 1977].** — Any law-enforcement agency that forwarded to any agency of this state, of the United States, or of any other state, copies of any fingerprints or photographs required to be returned or destroyed pursuant to section 1 [35-4-8-1] of this chapter shall request in writing that all such copies be returned to the agency which forwarded them and upon their return, the agency shall deliver them to the individual or destroy them as provided in this chapter [35-4-8-1 — 35-4-8-4]. [IC 35-4-8-2, as added by Acts 1977, P.L. 337, § 1, p. —.]

35-4-8-3. **Retention of information in any central repository prohibited — Changes in records not to be made [effective October 1, 1977].** — Whenever the request of an individual pursuant to section 1 [35-4-8-1] of this chapter to destroy or deliver to the individual any fingerprints or photographs within the agency's custody or possession is granted, no information concerning the arrest shall be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law-enforcement agency. Provided, That nothing in this chapter [35-4-8-1 — 35-4-8-4] shall require any change or alteration in any record, such as a police blotter entry made at the time of the arrest or in the record of any court in which the criminal charges were preferred. [IC 35-4-8-3, as added by Acts 1977, P.L. 337, § 1, p. —.]

Compiler's Notes. Section 2 of Acts 1977, P.L. 337 provided that this section take effect October 1, 1977.

35-4-8-4. **Violations — Penalty [effective October 1, 1977].** — Any law-enforcement officer who violates any provision of this chapter [35-4-8-1 — 35-4-8-4] commits a class B misdemeanor. [IC 35-4-8-4, as added by Acts 1977, P.L. 337, § 1, p. —.]

749.1 Criminal identification

The commissioner of public safety may provide in his department a bureau of criminal identification. He may adopt rules and regulations for the same. The sheriff of each county and the chief of police of each city and town shall furnish to the department criminal identification records and other information as directed by the commissioner of public safety.

749.2 Finger and palm prints—duty of sheriff and chief of police

It shall be the duty of the sheriff of every county, and the chief of police of each city regardless of the form of government thereof and having a population of ten thousand or over, to take the fingerprints of all persons held either for investigation, for the commission of a felony, as a fugitive from justice, or for bootlegging, the maintenance of an intoxicating liquor nuisance, manufacturing intoxicating liquor, operating a motor vehicle while intoxicated or for illegal transportation of intoxicating liquor, and to take the fingerprints of all unidentified dead bodies in their respective jurisdictions, and to forward such fingerprint records on such forms and in such manner as may be prescribed by the commissioner of public safety, within forty-eight hours after the same are taken, to the bureau of criminal investigation. If the fingerprints of any person are taken under the provisions hereof whose fingerprints are not already on file, and said person is not convicted of any offense, then said fingerprint records shall be destroyed by any officer having them. In addition to the fingerprints as herein provided any such officer may also take the palm prints of any such person.

749.3 Equipment

The board of supervisors of each county and the council of each city affected by the provisions of section 749.2 shall furnish all necessary equipment and materials for the carrying out of the provisions of said section.

749.4 Penal institutions—fingerprints and photographs of inmates

It shall be the duty of the wardens of the penitentiary and men's reformatory, and superintendents of the women's reformatory, the Iowa training school for boys, and the Iowa training school for girls, to take or procure the taking of the fingerprints, and, in the case of the penitentiary, men's reformatory, and women's reformatory only, bertillon photographs of any person received on commitment to their respective institutions, and to forward such fingerprint records and photographs within ten days after the same are taken to the division of criminal investigation and bureau of identification, Iowa department of public safety, and to the federal bureau of investigation.

It shall also be the duty of the said wardens and superintendent to procure the taking of five by seven inch photographic negative showing a full length view of each convict, prisoner or inmate of the penitentiary, men's reformatory, and women's reformatory in his or her release clothing immediately prior to his or her discharge from the institution either upon expiration of sentence or commitment or on parole, and to forward such photographic negative within two days after the same is taken to the division of criminal investigation and bureau of identification, Iowa department of public safety. Acts 1949 (53 G.A.) ch. 243, § 1.

749A.1 Laboratory created

There is hereby created under the control, direction and supervision of the commissioner of public safety a state criminalistics laboratory. The commissioner of public safety may assign the criminalistics laboratory to a division or bureau within his department. The laboratory shall, within its capabilities, conduct analyses, comparative studies, fingerprint identification, firearms identification, questioned documents studies, and other studies normally performed by a criminalistics laboratory when requested by a county attorney, medical examiner, or law enforcement agency of this state to aid in any criminal investigation. Agents of the division of criminal investigation and bureau of identification may be assigned to the criminalistics laboratory by the commissioner. New employees shall be appointed pursuant to chapter 95, and need not qualify as agents for the division of criminal investigation and bureau of identification, and shall not participate in the peace officers' retirement plan established pursuant to chapter 97A.
Acts 1970 (63 G.A.) ch. 1280, § 1.

749A.3 Commissioner to make rules

The commissioner of public safety shall make rules defining the capabilities of the criminalistics laboratory. He shall make rules governing the handling of items to be processed by the criminalistics laboratory from the time they are forwarded to the laboratory by a county medical examiner or a city, town, or state law enforcement agency or county sheriff until their return to the forwarder. The rules shall prescribe a method of identifying, forwarding, handling and returning items that will maintain the identity and integrity of the item. An item handled in conformity with the rules shall be presumed to be admissible in evidence as to the period in transit to and from and while in custody of the laboratory without further foundation.
Acts 1970 (63 G.A.) ch. 1280, § 3.

749A.4 Copy of finding to defendant

The county attorney shall give the accused person, or his attorney, after an indictment or county attorney's information has been returned, a copy of each report of the findings of the criminalistics laboratory conducted in the investigation of the indictable criminal charge against him at the time of arraignment, or if such report is received after arraignment, upon receipt, whether or not such findings are to be used in evidence against him. If such report is not given to the accused or his attorney at least four days prior to trial, such fact shall be grounds for a continuance.
Acts 1970 (63 G.A.) ch. 1280, § 4.

CHAPTER 749. BUREAU OF CRIMINAL IDENTIFICATION

749.1 Criminal identification

Iowa Administrative Code
Bureau of Criminal Investigation, Public Safety Department, 680–4.1(17A) et seq. IAC.

749.2 Finger and palm prints—duty of sheriff and chief of police

It shall be the duty of the sheriff of every county, and the chief of police of each city regardless of the form of government thereof and having a population of ten thousand or over, to take the fingerprints of all persons held either for investigation, for the commission of a felony, as a fugitive from justice, or for bootlegging, the maintenance of an intoxicating liquor nuisance, manufacturing intoxicating liquor, operating a motor vehicle while under the influence of an alcoholic beverage or for illegal transportation of intoxicating liquor, and to take the fingerprints of all unidentified dead bodies in their respective jurisdictions, and to forward such fingerprint records on such forms and in such manner as may be prescribed by the commissioner of public safety, within forty-eight hours after the same are taken, to the bureau of criminal investigation. If the fingerprints of any person are taken under the provisions hereof whose fingerprints are not already on file, and said person is not convicted of any offense, then said fingerprint records shall be destroyed by any officer having them. In addition to the fingerprints as herein provided any such officer may also take the palm prints of any such person.

Amended by Acts 1969 (63 G.A.) ch. 205, § 12, eff. July 1, 1969.

CHAPTER 749B. CRIMINAL HISTORY AND INTELLIGENCE DATA [NEW]

Provisions constituting chapter 749B, Criminal History and Intelligence Data, consisting of sections 749B.1 to 749B.20, were enacted by Acts 1978 (65 G.A.) Ch. 294, §§ 1 to 20.

Iowa Administrative Code
Bureau of Criminal Investigation, Public Safety Department, 680–4.1(17A) et seq. IAC.

General Provisions, Confidential Records Council, 280–1.1(17A, 749B) et seq. IAC.

749B.1 Definitions of words and phrases

As used in this Act, unless the context otherwise requires:

1. "Department" means the department of public safety.

2. "Bureau" means the department of public safety, division of criminal investigation and bureau of identification.

3. "Criminal history data" means any or all of the following information maintained by the department or bureau in a manual or automated data storage system and individually identified:

a. Arrest data.
b. Conviction data.
c. Disposition data.
d. Correctional data.

4. "Arrest data" means information pertaining to an arrest for a public offense and includes the charge, date, time, and place. Arrest data includes arrest warrants for all public offenses outstanding and not served and includes the filing of charges, by preliminary information when filed by a peace officer or law enforcement officer or indictment, the date and place of alleged commission and county of jurisdiction.

5. "Conviction data" means information that a person was convicted of or entered a plea of guilty to a public offense and includes the date and location of commission and place and court of conviction.

6. "Disposition data" means information pertaining to a recorded court proceeding subsequent and incidental to a public offense arrest and includes dismissal of the charge, suspension or deferral of sentence.

7. "Correctional data" means information pertaining to the status, location and activities of persons under the supervision of the county sheriff, the division of corrections of the department of social services, board of parole or any other state or local agency performing the same or similar function, but does not include investigative, sociological, psychological, economic or other subjective information maintained by the division of corrections of the department of social services or board of parole.

8. "Public offense" as used in subsections 4, 5, and 6 does not include nonindictable offenses under either chapter 321 or local traffic ordinances.

9. "Individually identified" means criminal history data which relates to a specific person by one or more of the following means of identification:

a. Name and alias, if any.

b. Social security number.

c. Fingerprints.

d. Other index cross-referenced to paragraphs "a", "b", or "c".

e. Other individually identifying characteristics.

10. "Criminal justice agency" means any agency or department of any level of government which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders.

11. "Intelligence data" means information collected where there are reasonable grounds to suspect involvement or participation in criminal activity by any person.

12. "Surveillance data" means information on individuals, pertaining to participation in organizations, groups, meetings or assemblies, where there are no reasonable grounds to suspect involvement or participation in criminal activity by any person.

Acts 1973 (65 G.A.) ch. 294, § 1.

749B.2 Dissemination of criminal history data

The department and bureau may provide copies or communicate information from criminal history data only to criminal justice agencies, or such other public agencies as are authorized by the confidential records council. The bureau shall maintain a list showing the individual or agency to whom the data is disseminated and the date of dissemination.

Authorized agencies and criminal justice agencies shall request and may receive criminal history data only when:

1. The data is for official purposes in connection with prescribed duties, and

2. The request for data is based upon name, fingerprints, or other individual identifying characteristics.

The provisions of this section and section 749B.3 which relate to the requiring of an individually identified request prior to the dissemination or redissemination of criminal history data shall not apply to the furnishing of criminal history data to the federal bureau of investigation or to the dissemination or redissemination of information that an arrest warrant has been or will be issued, and other relevant information including but not limited to, the offense and the date and place of alleged commission, individually identifying characteristics of the person to be arrested, and the court or jurisdiction issuing the warrant.

Acts 1973 (65 G.A.) ch. 294, § 2.

749B.3 Redissemination

A peace officer, criminal justice agency, or state or federal regulatory agency shall not redisseminate criminal history data, within or without the agency, received from the department or bureau, unless:

1. The data is for official purposes in connection with prescribed duties of a criminal justice agency, and

2. The agency maintains a list of the persons receiving the data and the date and purpose of the dissemination, and

3. The request for data is based upon name, fingerprints, or other individual identification characteristics.

A peace officer, criminal justice agency, or state or federal regulatory agency shall not redisseminate intelligence data, within or without the agency, received from the department or bureau or from any other source, except as provided in subsections 1 and 2 of this section.

Acts 1973 (65 G.A.) ch. 294, § 3.

749B.4 Statistics

The department, bureau, or a criminal justice agency may compile and disseminate criminal history data in the form of statistical reports derived from such information or as the basis of further study provided individual identities are not ascertainable.

The bureau may with the approval of the commissioner of public safety disseminate criminal history data to persons conducting bona fide research, provided the data is not individually identified.

Acts 1973 (65 G.A.) ch. 294, § 4.

749B.5 Right of notice, access and challenge

Any person or his attorney with written authorization and fingerprint identification shall have the right to examine criminal history data filed with the bureau that refers to the person. The bureau may prescribe reasonable hours and places of examination.

Any person who files with the bureau a written statement to the effect that a statement contained in the criminal history data that refers to him is nonfactual, or information not authorized by law to be kept, and requests a correction or elimination of that information that refers to him shall be notified within twenty days by the bureau, in writing, of the bureau's decision or order regarding the correction or elimination. Judicial review of the actions of the bureau may be sought in accordance with the terms of the Iowa administrative procedure Act. Immediately upon the filing of the petition for judicial review the court shall order the bureau to file with the court a certified copy of the criminal history data and in no other situation shall the bureau furnish an individual or his attorney with a certified copy, except as provided by this Act.

Upon the request of the petitioner, the record and evidence in a judicial review proceeding shall be closed to all but the court and its officers, and access thereto shall be refused unless otherwise ordered by the court. The clerk shall maintain a separate docket for such actions. No person, other than the petitioner shall permit a copy of any of the testimony or pleadings or the substance thereof to be made available to any person other than a party to the action or his attorney. Violation of the provisions of this section shall be a public offense, punishable under section 749B.7.

Whenever the bureau corrects or eliminates data as requested or as ordered by the court, the bureau shall advise all agencies or individuals who have received the incorrect information to correct their files. Upon application to the district court and service of notice on the commissioner of public safety, any individual may request and obtain a list of all persons and agencies who received criminal history data referring to him, unless good cause be shown why the individual should not receive said list.

Acts 1973 (65 G.A.) ch. 294, § 5. Amended by Acts 1974 (65 G.A.) ch. 1090, § 206, eff. July 1, 1975.

749B.6 Civil remedy

Any person may institute a civil action for damages under chapters 25A or 613A or to restrain the dissemination of his criminal history data or intelligence data in violation of this chapter, and any person, agency or governmental body proven to have disseminated or to have requested and received criminal history data or intelligence data in violation of this chapter shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorneys' fees incurred by the party bringing the action. In no case shall the award for damages be less than one hundred dollars.

Acts 1973 (65 G.A.) ch. 294, § 6.

749B.7 Criminal penalties

Text of section effective until January 1, 1978.

1. Any person who willfully requests, obtains, or seeks to obtain criminal history data under false pretenses, or who willfully communicates or seeks to communicate criminal history data to any agency or person except in accordance with this chapter, or any person connected with any research program authorized pursuant to this chapter who willfully falsifies criminal history data or any records relating thereto, shall, upon conviction, for each such offense be punished by a fine of not more than one thousand dollars or by imprisonment in the state penitentiary for not more than two years, or by both fine and imprisonment. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate criminal history data except in accordance with this chapter shall for each such offense be fined not more than one hundred dollars or be imprisoned not more than ten days.

2. Any person who willfully requests, obtains, or seeks to obtain intelligence data under false pretenses, or who willfully communicates or seeks to communicate intelligence data to any agency or person except in accordance with this chapter, shall for each such offense be punished by a fine of not more than five thousand dollars or by imprisonment in the state penitentiary for not more than three years, or by both fine and imprisonment. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate intelligence data except in accordance with this chapter shall for each such offense be fined not more than five hundred dollars or be imprisoned not more than six months, or both.

3. If the person convicted under this section is a peace officer, the conviction shall be grounds for discharge or suspension from duty without pay and if the person convicted is a public official or public employee, the conviction shall be grounds for removal from office.

4. Any reasonable grounds for belief that a public employee has violated any provision of this chapter shall be grounds for immediate removal from all access to criminal history data and intelligence data.

Acts 1973 (65 G.A.) ch. 294, § 7.

749B.8 Intelligence data

Intelligence data contained in the files of the department of public safety or a criminal justice agency shall not be placed within a computer data storage system.

Intelligence data in the files of the department may be disseminated only to a peace officer, criminal justice agency, or state or federal regulatory agency, and only if the department is satisfied that the need to know and the intended use are reasonable. Whenever intelligence data relating to a defendant for the purpose of sentencing has been provided a court, the court shall inform the defendant or his attorney that it is in possession of such data and shall, upon request of the defendant or his attorney, permit examination of such data.

If the defendant disputes the accuracy of the intelligence data, he shall do so by filing an affidavit stating the substance of the disputed data and wherein it is inaccurate. If the court finds reasonable doubt as to the accuracy of such information, it may require a hearing and the examination of witnesses relating thereto on or before the time set for sentencing.

Acts 1973 (65 G.A.) ch. 294, § 8.

749B.9 Surveillance data prohibited

No surveillance data shall be placed in files or manual or automated data storage systems by the department or bureau or by any peace officer or criminal justice agency. Violation of the provisions of this section shall be a public offense punishable under section 749B.7.

Acts 1973 (65 G.A.) ch. 294, § 9.

749B.10 Rules

The department shall adopt rules and regulations designed to assure the security and confidentiality of all criminal history data and intelligence data systems.

Acts 1973 (65 G.A.) ch. 294, § 10.

749B.11 Education program

The department shall require an educational program for its employees and the employees of criminal justice agencies on the proper use and control of criminal history data and intelligence data.

Acts 1973 (65 G.A.) ch. 294, § 11.

749B.12 Data processing

Nothing in this Act shall preclude the use of the equipment and hardware of the data processing service center for the storage and retrieval of criminal history data. Files shall be stored on the computer in such a manner as the files cannot be modified, destroyed, accessed, changed or overlaid in any fashion by noncriminal justice agency terminals or personnel. That portion of any computer, electronic switch or manual terminal having access to criminal history data stored in the state computer must be under the management control of a criminal justice agency.

Acts 1973 (65 G.A.) ch. 294, § 12. Amended by Acts 1974 (65 G.A.) ch. 1087, § 26.

749B.13 Review

The department shall initiate periodic review procedures designed to determine compliance with the provisions of this chapter within the department and by criminal justice agencies and to determine that data furnished to them is factual and accurate.

Acts 1973 (65 G.A.) ch. 294, § 13.

749B.14 Systems for the exchange of criminal history data

The department shall regulate the participation by all state and local agencies in any system for the exchange of criminal history data, and shall be responsible for assuring the consistency of such participation with the terms and purposes of this chapter.

Direct access to such systems shall be limited to such criminal justice agencies as are expressly designated for that purpose by the department. The department shall, with respect to telecommunications terminals employed in the dissemination of criminal history data, insure that security is provided over an entire terminal or that portion actually authorized access to criminal history data.

Acts 1973 (65 G.A.) ch. 294, § 14.

749B.15 Reports to department

When it comes to the attention of a sheriff, police department, or other law enforcement agency that a public offense has been committed in its jurisdiction, it shall be the duty of the law enforcement agency to report information concerning such crimes to the bureau on a form to be furnished by the bureau not more than thirty-five days from the time the crime first comes to the attention of such law enforcement agency. These reports shall be used to generate crime statistics. The bureau shall submit statistics to the governor, legislature and crime commission on a quarterly and yearly basis.

When a sheriff, police department or other law enforcement agency makes an arrest which is reported to the bureau, the arresting law enforcement agency and any other law enforcement agency which obtains custody of the arrested person shall furnish a disposition report to the bureau whenever the arrested person is transferred to the custody of another law enforcement agency or is released without having a complaint or information filed with any court.

Whenever a criminal complaint or information is filed in any court, the clerk shall furnish a disposition report of such case.

The disposition report, whether by a law enforcement agency or court, shall be sent to the bureau within thirty days after disposition on a form provided by the bureau.

Acts 1973 (65 G.A.) ch. 294, § 15.

749B.16 Review and removal

At least every year the bureau shall review and determine current status of all Iowa arrests reported after August 15, 1973, which are at least one year old with no disposition data. Any Iowa arrest recorded within a computer data storage system which has no disposition data after five years shall be removed unless there is an outstanding arrest warrant or detainer on such charge.

Acts 1973 (65 G.A.) ch. 294, § 16.

749B.17 Exclusions

Criminal history data in a computer data storage system does not include: Arrest or disposition data after the person has been acquitted or the charges dismissed.

Acts 1973 (65 G.A.) ch. 294, § 17.

749B.18 Public records

Nothing in this chapter shall prohibit the public from examining and copying the public records of any public body or agency as authorized by chapter 68A.

Criminal history data and intelligence data in the possession of the department or bureau, or disseminated by the department or bureau, are not public records within the provisions of chapter 68A.
Acts 1973 (65 G.A.) ch. 294, § 18.

749B.19 Confidential records council

There is hereby created a confidential records council consisting of nine regular members. Two members shall be appointed from the house of representatives to serve as ex officio nonvoting members by the speaker of the house, no more than one of whom shall be from the same party. Two members shall be appointed from the senate to serve as ex officio nonvoting members by the lieutenant governor, no more than one of whom shall be from the same party. The other members of the council shall be: A judge of the district court appointed by the chief justice of the supreme court, one local law enforcement official, appointed by the governor; the commissioner of public safety or his designee; and two private citizens not connected with law enforcement, appointed by the governor. The council shall select its own chairman. The members shall serve at the pleasure of those by whom their appointments are made.

The council shall meet at least annually and at any other time upon the call of the governor, the chairman of the council, or any three of its members. Each nonlegislative council member shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties from funds appropriated to the department of public safety. Each legislative member shall receive expenses pursuant to section 2.10 and section 2.12.

The council shall have the following responsibilities and duties:

1. Shall periodically monitor the operation of governmental information systems which deal with the collection, storage, use and dissemination of criminal history or intelligence data.

2. Shall review the implementation and effectiveness of legislation and administrative rules concerning such systems.

3. May recommend changes in said rules and regulations and legislation to the legislature and the appropriate administrative officials.

4. May require such reports from state agencies as may be necessary to perform its duties.

5. May receive and review complaints from the public concerning the operation of such systems.

6. May conduct such inquiries and investigations as it finds appropriate to achieve the purposes of this chapter. Each criminal justice agency in this state and each state and local agency otherwise authorized access to criminal history data is authorized and directed to furnish to the council, upon its request, such statistical data, reports, and other information in its possession as the council deems necessary to carry out its functions under this chapter. However, the council and its members, in such capacity, shall not have access to criminal history data or intelligence data unless it is data from which individual identities are not ascertainable or data which has been masked so that individual identities are not ascertainable. However, the council may examine data from which the identity of an individual is ascertainable if requested in writing by that individual or his attorney with written authorization and fingerprint identification.

7. Shall annually approve rules and regulations adopted in accordance with section 749B.10 and rules to assure the accuracy, completeness and proper purging of criminal history data.

8. Shall approve all agreements, arrangements and systems for the interstate transmission and exchange of criminal history data.
Acts 1973 (65 G.A.) ch. 294, § 19. Amended by Acts 1976 (66 G.A.) ch. 1052, § 17.

749B.20 Motor vehicle operator's record exempt

The provisions of sections 749B.2 and 749B.3 shall not apply to the certifying of an individual's operating record pursuant to section 321A.3.
Acts 1973 (65 G.A.) ch. 294, § 20.

EXECUTIVE ORDER NUMBER ____

WHEREAS, on the twentieth day of May, 1975, the United States Justice Department promulgated rules and regulations covering Criminal History Record Information Systems; and

WHEREAS, on March 19, 1976, the United States Justice Department amended those rules and regulations as they related to the dissemination of Criminal History Record Information; and

WHEREAS, Section 20.21B of said regulations limit the dissemination of nonconviction data to non-criminal justice agencies which require such data to implement a statute or executive order; and

WHEREAS, Section four hundred point seventeen (400.17), Code of Iowa, prohibits the appointment of peace officers under Civil Service who have been convicted of a felony; and

WHEREAS, the Iowa Law Enforcement Academy established under the provisions of eighty B (80B), Code of Iowa, has been delegated the responsibility of certifying individuals as having met the minimum requirements for law enforcement officers; and

WHEREAS, the Iowa Confidential Records Council established pursuant to Chapter seven hundred forty-nine B (749B), Code of Iowa, has authorized the dissemination of criminal history data concerning peace officer applicants to and employees of the Iowa Law Enforcement Academy;

NOW, THEREFORE, I, Robert D. Ray, Governor of the State of Iowa, do hereby authorize the Iowa Law Enforcement Academy to receive non-conviction data concerning applicants for employment by the Academy and for applicants for peace officer positions required to complete basic law enforcement training furnished or approved by the Iowa Law Enforcement Academy.

In testimony whereof, I have here unto subscribed my name and cause the great seal of the State to be affixed. Done at Des Moines this _____ day of _____ in the year of our Lord one thousand nine hundred seventy-six.

ATTEST:

SECRETARY OF STATE

GOVERNOR

21-2501. Officers to take fingerprints of suspected law violators; identification data to national bureau of identification and to the state bureau of investigation. It is hereby made the duty of every sheriff and police department in the state, immediately upon the arrest of any person or persons wanted for the commission of a felony or believed to be a fugitive from justice, or upon the arrest of any person or persons who may be in the possession at the time of arrest of any goods or property reasonably believed to have been stolen by such person or persons, or in whose possession may be found firearms or other concealed weapons, burglary tools, high explosives, or other appliances believed to be used solely for criminal purposes, or who may be known to be vagrants, or who are wanted for any offense which involves sexual conduct prohibited by law, or for violation of article 25 (uniform narcotic drug act) or article 26 (hypnotic, somnifacient or stimulating drugs) of chapter 65 of the Kansas statutes annotated, or suspected of being or known to be habitual criminals or violators of the intoxicating liquor law, to cause two sets of fingerprint impressions to be made of such person or persons, on the forms provided by the department of justice of the United States or the bureau of investigation of the state of Kansas, and forward one set of such impressions to the national bureau of identification and investigation, department of justice, at Washington, D. C., and forward one set of such impressions to the bureau of investigation of the state of Kansas at Topeka, Kansas, together with a comprehensive description of such individual or individuals and such other data and information as to the identification of such person or persons arrested as the department of justice and bureau of investigation may require; and such sheriff and police department as aforesaid may take and retain copies of such fingerprint impressions for their own use, together with a comprehensive description and such other data and information as may be necessary to properly identify such person or persons. This section shall not be construed to include violators of any city, town or local ordinance. [L. 1931, ch. 178, § 1; L. 1959, ch. 165, § 1; L. 1969, ch. 183, § 1; July 1.]

21-2501a. Maintenance of records of felony offenses and certain misdemeanors by law enforcement agencies; reports to bureau of investigation; form. (*a*) All law enforcement agencies having responsibility for law enforcement in any political subdivision of this state shall maintain, on forms approved by the attorney general, a permanent record of all felony offenses reported or known to have been committed within their respective jurisdictions, and of all misdemeanors or other offenses which involve the violation of article 25 (uniform narcotic drug act and) or article 26 (hypnotic, somnifacient or stimulating drugs) of chapter 65 of the Kansas statutes annotated.

(*b*) All law enforcement agencies having the responsibility of maintaining a permanent record of offenses shall file with the bureau of investigation, on a form approved by the attorney general, a report on each offense for which a permanent record is required within seventy-two (72) hours after such offense is reported or known to have been committed. [L. 1969, ch. 183, § 2; July 1.]

21-2504. Attorney general may call upon designated officers for information; forms. (a) For the purpose of controlling crime and obtaining reliable statistics about crime and criminals, the attorney general may call upon and obtain from the clerks of district courts, sheriffs, police departments and county attorneys all information that said attorney general may deem necessary in ascertaining the true condition of the crime situation; and it shall be the duty of the above-mentioned officers to furnish the information so requested by the attorney general.

(*b*) The attorney general shall provide, upon request, forms for fingerprint impressions, for the permanent record of offenses, and for the reports of offenses required by K. S. A. 21-2501 and 21-2501a. [K. S. A. 21-2504; L. 1976, ch. 156, § 1; Jan. 10, 1977.]

21-4604. Presentence investigation and report. Whenever a defendant is convicted of a crime or offense, the court before whom the conviction is had may request a presentence investigation by a probation officer. Whenever an investigation is requested, the probation officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. All local and state police agencies shall furnish to the probation officer such criminal records as the probation officer may request. Where in the opinion of the court it is desirable, the investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution, the investigating agency shall send a report of its investigation to the institution at the time of commitment. [L. 1969, ch. 180, § 21-4604; L. 1970, ch. 124, § 12; July 1.]

21-4605. Availability of report to defendants and others. The judge shall make available the presentence report, any report that may be received from the diagnostic center, and other diagnostic reports to the attorney for the state and to the counsel for the defendant when requested by them, or either of them. Such reports shall be part of the record but shall be sealed and opened only on order of the court.

If a defendant is committed to a state institution or to the custody of the secretary of corrections such reports shall be sent to the secretary of corrections and to the superintendent of such state institution. [L. 1969, ch. 180, § 21-4605; L. 1972, ch. 317, § 98; L. 1973, ch. 339, § 70; July 1, 1974.]

60-2702a. PROCEDURE, CIVIL

Rule No. 184. Annulment of conviction and expungement of record procedure. The court may permit a defendant to withdraw his plea of guilty or the court may set aside the verdict of guilty as provided by K. S. A. 21-4616 as amended or may permit a defendant to have his record expunged as provided by K. S. A. 21-4617 as amended.

21-4616. Annulment of certain convictions; effect; disclosure of existence of records relating thereto prohibited; exceptions. (*a*) Every defendant who had not attained the age of twenty-one (21) years at the time of the commission of the crime for which he or she was convicted, and who has served the sentence imposed or who has fulfilled the conditions of his or her probation or suspension of sentence for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time thereafter be permitted by the court to withdraw his or her plea of guilty and enter a plea of not guilty; or if such defendant has been convicted after a plea of not guilty, the court may set aside the verdict of guilty; and in either case, the court shall thereupon dismiss the complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the crime of which he or she has been convicted, and such defendant shall in all respects be treated as not having been convicted, except that upon conviction of any subsequent crime such conviction may be considered as a prior conviction in determining the sentence to be imposed. The defendant shall be informed of this privilege when he or she is placed on probation or suspended sentence.

(*b*) In any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of crime has been annulled under this statute may state that he or she has never been convicted of such crime.

(*c*) Whenever any conviction of an individual for the commission of a crime has been annulled under the provisions of this section, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records upon inquiry from any source unless such inquiry be that of the individual whose conviction was annulled or that of a sentencing court following the conviction of the individual, whose conviction was annulled, for the commission of a subsequent crime. Such custodian shall release such records to the sentencing court upon a showing of the conviction of such individual of a subsequent crime and a statement that the information is necessary in determining the sentence to be imposed for the subsequent crime. The individual whose conviction of a crime has been annulled shall be given access to examine such records relating to that crime. [K. S. A. 21-4616; L. 1976, ch. 161, § 1; July 1.]

21-4617. Expungement of record of conviction; offender over twenty-one; effect; disclosure of records relating thereto prohibited; exceptions. (*a*) Every offender who was twenty-one (21) years of age or older at the time of the commission of the crime for which he or she was committed and who has served the sentence imposed or who has fulfilled the conditions of his or her probation, suspension of sentence, conditional release or parole for the entire period thereof, or who shall have been discharged from probation, conditional release or parole prior to the termination of the period thereof, may petition the court five (5) years after the end of such sentence, the fulfilling of such conditions of probation, suspension of sentence, conditional release or parole or such discharge from probation, conditional release or parole and may request that his or her record be expunged of such conviction if during such five (5) year period such person has exhibited good moral character and has not been convicted of a felony. In considering any such request for expungement, the court shall have access to any records or reports relating to such offender, including records or reports of a confidential nature, on file with the secretary of corrections or the Kansas adult authority.

(*b*) Any person having his or her record so expunged shall thereafter be released from all penalties and disabilities resulting from the crime of which he or she has been convicted, and such person shall in all respects be treated as not having been convicted, except that upon conviction of any subsequent crime such conviction may be considered as a prior conviction in determining the sentence to be imposed. The offender shall be informed of this privilege when he or she is placed on probation, suspended sentence, conditional release or parole.

(*c*) In any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of crime has been expunged under this statute may state that he or she has never been convicted of such crime.

(*d*) Whenever the record of any conviction of an individual for the commission of a crime has been expunged under the provisions of this section, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records upon inquiry from any source unless such inquiry be that of the individual whose record was expunged or that of a sentencing court following the conviction of the individual, whose record was expunged, for the commission of a subsequent crime. Such custodian shall release such records to the sentencing court upon a showing of the conviction of such individual of a subsequent crime and a statement that the information is necessary in determining the sentence to be imposed for the subsequent crime. The individual whose record of conviction of a crime has been expunged shall be given access to examine the records of arrest, conviction and incarceration relating to that crime. [K. S. A. 21-4617; L. 1976, ch. 161, § 2; July 1.]

22-3711. Certain records privileged. The presentence report, the preparole report and the supervision history, obtained in the discharge of official duty by any member or employee of the authority, shall be privileged and shall not be disclosed directly or indirectly to anyone other than the authority, the judge, the attorney general, or others entitled to receive such information, except that the authority or court may in its discretion permit the inspection of the report or parts thereof by the defendant or prisoner or his attorney, or other person having a proper interest therein, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful. [L. 1970, ch. 129, § 22-3711; L. 1972, ch. 317, § 84; L. 1973, ch. 339, § 64; July 1, 1974.]

22-3722. Discharge; restoration of civil rights. The period served on parole or conditional release shall be deemed service of the term of confinement, and, subject to the provisions contained in section 23 [75-5217] of this act relating to an inmate who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence.

When an inmate on parole or conditional release has performed the obligations of his release for such time as shall satisfy the authority that his final release is not incompatible with the best interest of society and the welfare of the individual, the authority may make a final order of discharge and issue a certificate of discharge to the inmate but no such order of discharge shall be made in any case within a period of less than one year after the date of release except where the sentence expires earlier thereto. Such discharge, and the discharge of an inmate who has served his term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment, and the certification of discharge shall so state. Nothing herein contained shall be held to impair the power of the governor to grant a pardon or commutation of sentence in any case. [L. 1970, ch. 129, § 22-3722; L. 1972, ch. 317, § 95; L. 1973, ch. 339, § 68; July 1, 1974.]

38-815a. Restrictions on fingerprints, photographs and records of child; expungement. (*a*) Neither the fingerprints nor a photograph shall be taken of any child less than eighteen (18) years of age, taken into custody for any purposes, without the consent of the judge of the district court having jurisdiction. When the judge permits the fingerprinting of any such child, the prints shall be taken as a civilian and not as a criminal record.

(*b*) All records in this state concerning a public offense committed or alleged to have been committed by a child less than eighteen (18) years of age, shall be kept separate from criminal or other records, and shall not be open to inspection, except by order of the district court. It shall be the duty of any peace officer, judge or other similar officer, making or causing to be made any such record, to at once report to the judge of the district court of the district of such officer or judge the fact that such record has been made and the substance thereof together with all of the information in the possession of the officer or judge pertaining to the making of such record.

(*c*) When a record has been made by or at the instance of any peace officer, judge or other similar officer, concerning a public offense committed or alleged to have been committed by a child less than eighteen (18) years of age, the judge of the district court of the district in which such record is made shall have the power to order such record expunged. If the person to whom such order is directed shall refuse or fail to do so within a reasonable time after receiving such order, such person may be adjudged in contempt of court and punished accordingly.

(*d*) This section shall be construed as supplemental to and a part of the Kansas juvenile code. [L. 1974, ch. 178, § 3; L. 1976, ch. 207, § 14; Jan. 10, 1977.]

Article 2.—RECORDS OPEN TO PUBLIC

45-201. Official public records open to inspection; exceptions; "official public records" defined. (*a*) All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, except those of the district court concerning proceedings pursuant to the juvenile code which shall be open unless specifically closed by the judge or by law, adoption records, records of the birth of illegitimate children, and records specifically closed by law or by directive authorized by law, shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen.

(*b*) For the purposes of this act and the act of which this act is amendatory, the term "official public records" shall not be deemed to apply to personally identifiable records, files, and data which are described in K. S. A. 1976 Supp. 72-6214 and the accessibility and availability of which is limited by the terms of said section. [K. S. A. 45-201; L. 1976, ch. 228, § 2; L. 1976, ch. 151, § 6; Jan. 10, 1977.]

50-712. Public record information for employment purposes. A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall

(*a*) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(*b*) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported. [L. 1973, ch. 85, § 147; Jan. 1, 1974.]

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75-5218. Sentenced to custody of secretary of corrections; notice to secretary; copy of record; female offenders. When any person is sentenced to the custody of the secretary of corrections pursuant to the provisions of K. S. A. 1972 Supp. 21-4609, as amended, the clerk of the court wherein said conviction was had shall within three (3) days notify the secretary of corrections. Said clerk shall also deliver to the officer having said offender in charge a record containing a copy of the indictment or information, the verdict of the jury, the name and residence of the officer before whom the preliminary trial was had, the judge presiding at the trial, and of the witnesses sworn on said trial, together with the commitment to the Kansas reception and diagnostic center; which record shall be delivered to the officers conveying said offender to the Kansas reception and diagnostic center. Any female offender sentenced according to the provisions of section 75 [75-5229] of this act shall not be committed to the Kansas reception and diagnostic center but shall be conveyed directly to the Kansas correctional institution for women. [L. 1973, ch. 339, § 27; July 1, 1974.]

75-5221. Record of inmates. The secretary shall keep a record of each inmate sentenced to his custody with the date of his admission, place of residence, the county which he is from; if transferred, the institution from which he was transferred, crime for which convicted, age, education and such other facts pertaining to his early social influences, habits and former life and character as will aid in determining his natural tendencies and the best plan of treatment; also records showing each inmate's progress and standing in the institutions, date of his parole, his final discharge and any facts of personal history obtainable subsequent to parole; also a record showing all punishment inflicted and the purpose therefor, and such other records and information as the secretary may direct. [L. 1973, ch. 339, § 30; July 1, 1974.]

75-5266. Psychiatric evaluation reports privileged. Psychiatric evaluation reports of the reception and diagnostic center shall be privileged and shall not be disclosed directly or indirectly to anyone except as provided herein. The court, the county attorney, the attorney for the defendant or inmate, the Kansas adult authority and its staff, the classification committees of the state correctional institutions and those persons authorized by the secretary shall have access to such reports. Such reports may be disclosed to the defendant or inmate, the members of his family or his friends or the superintendent of any other state institution when authorized by the director of the Kansas reception and diagnostic center. Employees of the institutions under the supervision of the secretary are expressly forbidden from disclosing the contents of such reports to anyone except as provided herein. [L. 1973, ch. 339, § 57; July 1, 1974.]

KENTUCKY LAW ENFORCEMENT COUNCIL

15.310. Definitions for KRS 15.310 to 15.992.—As used in KRS 15.310 to 15.992, unless the context otherwise requires:

(1) "Council" means the Kentucky law enforcement council established by KRS 15.310 to 15.992.

(2) "Bureau" means the bureau of training of the department of justice.

(3) "Law enforcement officer" means a member of a lawfully organized police unit or police force of state, county, city or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as sheriffs, sworn deputy sheriffs, campus security officers, law enforcement support personnel, public airport authority security officers, other public and federal peace officers responsible for law enforcement, and private security guards licensed pursuant to state statute.

(4) "Secretary" means the secretary of the department of justice. (Enact. Acts 1968, ch. 129, § 1; 1974, ch. 74, Art. V, § 30.)

Opinions of Attorney General. This section does not confer jurisdiction on the Kentucky law enforcement council to regulate the training of instructors of private police officers or to issue or withhold certificates for such instructors. OAG 72-328.

15.315. Kentucky law enforcement council—Members—Terms—Vacancy.—The Kentucky law enforcement council is hereby established as an independent administrative body of state government to be made up as follows:

(1) The attorney general of Kentucky, the commander of the Kentucky state police, the dean of the school of police administration of the University of Louisville, the dean of the school of law enforcement of Eastern Kentucky University, the president of the Kentucky Peace Officers Association, the president of the Kentucky Association of Chiefs of Police, and the Kentucky president of the Fraternal Order of Police, shall be ex officio members of the council, as full voting members of the council by reason of their office. The Kentucky special agent in charge of the Federal Bureau of Investigation shall serve on the council in an advisory capacity only without voting privileges.

(2) Nine (9) members shall be appointed by the governor for terms of four (4) years from the following classifications: a city manager or mayor, one (1) Kentucky sheriff, a member of the Kentucky State Bar Association, five (5) chiefs of police, and a citizen of Kentucky not coming within the foregoing classifications. No person shall serve beyond the time he holds the office or employment by reason of which he was initially eligible for appointment. Vacancies shall be filled in the same manner as the original appointment and the successor shall be appointed for the unexpired term. Any member may be appointed for additional terms.

(3) No member may serve on the council with the dual membership as the representative of more than one (1) of the aforementioned groups or the holder of more than one (1) of the aforementioned positions. In the event that an existing member of the council assumes a position entitling him to serve on the council in another capacity, the governor shall appoint an additional member from the group concerned to prevent dual membership.

(4) Membership on the council does not constitute a public office and no member shall be disqualified from holding public office by reason of his membership. (Enact. Acts 1968, ch. 129, § 2; 1974, ch. 74, Art. V, § 31.)

15.330. Functions and powers of council.—The council is vested with the following functions and powers:

(1) To prescribe standards for the approval and continuation of approval of schools at which law enforcement training courses required under KRS 15.310 to 15.992 shall be conducted, including but not limited to minimum standards for facilities, faculty, curriculum, and hours of attendance related thereto;

(2) To prescribe minimum qualifications for instructors at such schools, except that institutions of higher education shall be exempt from council requirements;

(3) To prescribe qualifications for attendance and conditions for expulsion from such schools;

(4) To approve, to issue and to revoke for cause certificates to schools and instructors as having met requirements under KRS 15.310 to 15.992;

(5) To approve and to issue certificates of approval of law enforcement officers and other persons as having met requirements under KRS 15.310 to 15.992;

(6) To inspect and evaluate schools at any time and to require of schools, instructors and persons approved or to be approved under the provisions of KRS 15.310 to 15.992, any information or documents;

(7) To make a continuing study of law enforcement training standards and upon request, to furnish information relating to standards for recruitment, employment, promotion, organization, management and operation of any law enforcement agency in Kentucky;

(8) To conduct continuing research on criminal law and criminal justice subjects related to law enforcement training;

(9) To recommend reasonable rules and regulations to the secretary to accomplish the purposes of KRS 15.310 to 15.992;

(10) To adopt bylaws for the conduct of its business not otherwise provided for. (Enact. Acts 1968, ch. 129, § 5; 1974, ch. 74, Art. V, § 32.)

15.340. Availability of facilities and services.—Subject to approval by the secretary, the bureau may make its facilities and services available upon the following terms:

(1) The bureau may determine to which law enforcement agencies, corrections agencies and court agencies and its officers it will offer training;

(2) In determining the law enforcement officers for which it will offer training and in allocating available funds, the bureau shall give first priority to "police officers" as defined by KRS 15.420(2), public airport authority security officers, and to the Kentucky state police;

(3) Except for the officers described in subsection (2), the bureau may determine whether persons to whom it offers training or agencies employing such persons must bear any or all costs of such training. (Enact. Acts 1968, ch. 129, § 7; 1974, ch. 74, Art. V, § 33; 1976, ch. 300, § 9.)

15.350. Definitions.—(1) As used in KRS 15.350 to 15.370 "police training" includes all formal police training activities in the commonwealth with the exception of on-the-job training, training conducted at police roll calls, and training conducted by institutions of higher education. The Kentucky law enforcement council shall, by regulation, define those activities which constitute formal police training and those which do not.

(2) As used in KRS 15.350 to 15.370, "police instructor" means any person engaged in conducting, supervising, or teaching in courses of police training as defined in subsection (1). (Enact. Acts 1972, ch. 160, § 1.)

15A.010. Department of justice established—Secretary.—There is hereby established a department of state government to be known as the department of justice (hereinafter referred to in this chapter as the "department"). The department shall be headed by a secretary of justice (hereinafter referred to in this chapter as the "secretary") who shall have exclusive control and direction over the affairs of the department. The secretary shall be appointed by the governor and shall be bonded as required by KRS 62.160 in the minimum amount

15A.040. Kentucky crime commission—Duties—Members.—(1) The Kentucky crime commission shall advise and recommend to the secretary policies and direction for departmental long-range planning regarding all elements of the criminal justice system and shall exercise supervisory authority with respect to federal and state grants as required by federal or state law.

(2) Total membership of the Kentucky crime commission and the appointment of members thereto shall be determined and made by the governor. The secretary of justice shall serve ex officio as chairman of the commission. Members of the commission shall serve without compensation, but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties. (Enact. Acts 1974, ch. 74, Art. V, § 5.)

15A.160. Promulgation of administrative regulations.—The secretary may promulgate administrative regulations not inconsistent with the provisions of 1974 Acts, chapter 74. (Enact. Acts 1974, ch. 74, Art. V, § 17.)

15A.070. Duties of bureau of training. — The bureau of training shall establish, supervise and coordinate training programs and schools for law-enforcement personnel, correction personnel, and any other justice or nonlaw-enforcement related personnel as prescribed by the secretary. (Enact. Acts 1974, ch. 74, Art. V, § 8; 1976 (Ex. Sess.), ch. 14, § 4, effective July 1, 1977.)

17.110. Report of offense under penal code to department.—(1) All city and county law enforcement agencies shall cause a photograph, a set of fingerprints and a general description report of all persons arrested on a felony charge to be made and two (2) copies of each item forwarded within thirty (30) days after the arrest to the bureau of state police of the department of justice, in accordance with regulations of the department of justice. Such agencies shall furnish any information involving offenses under the penal code or in their possession relative to law enforcement upon request by the department of justice.

(2) Each city and county law enforcement agency shall advise the bureau of state police of the disposition made of all cases wherein a person has been charged with an offense under the penal code. (Enact. Acts 1958, ch. 129, §§ 1, 2; 1976, ch. 191, § 1.)

CRIMINAL STATISTICS

17.140. Centralized criminal history record information system.—(1) A centralized criminal history record information system shall be established in the department of justice under the direction, control and supervision of the commissioner of the bureau of state police.

(2) A centralized criminal history records information system means the system including equipment, facilities, procedures, and agreements for the collection, processing, preservation or dissemination of criminal history records maintained by the department of justice. (Enact. Acts 1968, ch. 128, § 1; 1974, ch. 74, Art. V, § 24(9); 1976, ch. 191, § 2.)

17.143. Qualified person to administer system—Personnel.—The commissioner shall appoint a qualified person to administer the centralized criminal history record information system. He shall have statistical training and experience and possess a knowledge of criminal law enforcement and administration and of penal and correctional institutions and methods. He shall be furnished with the necessary facilities and equipment and shall appoint clerical and other assistants necessary for the operation of the centralized criminal history record information system. (Enact. Acts 1968, ch. 128, § 2; 1976, ch. 191, § 3.)

17.147. Duties of bureau of state police.—The bureau of state police shall:

(1) Collect data necessary for the operation of the centralized criminal history record information system from all persons and agencies mentioned in KRS 17.150.

(2) Prepare and distribute to all such persons and agencies, forms to be used in reporting data to the centralized criminal history record information system. The forms shall provide for items of information needed by federal bureaus or departments engaged in the administration of criminal justice programs.

(3) Prescribe the forms and content of records to be kept by such persons and agencies to insure reporting of data to the centralized criminal history record information system.

(4) Instruct such persons and agencies in the installation, maintenance and use of such records and in the manner of reporting to the centralized criminal history record information system.

(5) Tabulate, analyze and interpret the data collected.

(6) Supply data, at their request, to participating federal bureaus, departments, or criminal justice agencies engaged in the administration of criminal justice programs.

(7) Annually present to the governor, on or before July 1, concerning the criminal statistics of the preceding calendar year, and present at such other times as the commissioner may deem wise, or the governor may request, reports on special aspects of criminal statistics. A sufficient number of copies of all reports shall be printed for general distribution in the interest of public enlightenment. (Enact. Acts 1968, ch. 128, § 3; 1970, ch. 92, § 4; 1974, ch. 74, Art. V, § 24(9); 1976, ch. 191, § 4.)

17.150. **Reports by law-enforcement officers and criminal justice agencies — Public inspection exemption — Regulations.** — (1) Every sheriff, chief of police, coroner, jailer, judge, prosecuting attorney, court clerk, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital or institution for the retarded; state police, state fire marshal, board of alcoholic beverage control; department for human resources; department of transportation; bureau of corrections; and every other person or criminal justice agency, public or private, dealing with crimes or criminals or with delinquency or delinquents, when requested by the department, shall:

(a) Install and maintain records needed for reporting data required by the department.

(b) Report to the department as and when the department requests, all data demanded by it except that such reports concerning a juvenile delinquent shall not reveal his or his parents' identity.

(c) Give the department or its accredited agent access for purpose of inspection.

(d) Cooperate with the department to the end that its duties may be properly performed.

(2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection providing prosecution is completed or a determination not to prosecute has been made. However, portions of such records may be withheld from inspection if such inspection would disclose:

(a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;

(b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;

(c) Information which may endanger the life or physical safety of law-enforcement personnel; or

(d) Information contained in such records to be used in a prospective law-enforcement action.

(3) When a demand for the inspection of such records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.

(4) Centralized criminal history records are not subject to public inspection. Centralized criminal history records mean information on individuals collected and compiled by the department of justice from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom to include sentencing, correctional supervision and release. Such information is restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the department of justice. Criminal justice agencies shall retain such documents and no official thereof shall wilfully conceal or destroy any record with intent to violate the provisions of this section.

(5) The provisions of KRS chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.

(6) The secretary of justice shall adopt such regulations as are necesary to carry out the provisions of the criminal history record information system and to insure the accuracy of such information based upon recommendations submitted by the commissioner, bureau of state police. (Enact. Acts 1938, ch. 128, § 4; 1974, ch. 74, Art. VI, § 31; 1976, ch. 191, § 5; 1976 (Ex. Sess.), ch. 14, § 5, effective January 2, 1978.)

17.153. Annual report.—(1) The annual report of the bureau shall contain statistics showing:

(a) the number and type of offenses known to public authorities;

(b) the personal and social characteristics of criminals and delinquents; and

(c) the administrative action taken by law enforcement, judicial, penal and correctional agencies in dealing with criminal and delinquents.

(2) The bureau shall also interpret such statistics and so present the information that it may be of value in guiding the legislature and those in charge of the apprehension, prosecution and treatment of criminals and delinquents, or those concerned with the prevention of crime and delinquency. The report shall include statistics that are comparable with national criminal statistics published by federal agencies heretofore mentioned. (Enact. Acts 1968, ch. 128, § 5; 1974, ch. 74, Art. V, § 24(9); 1976, ch.191, § 6.)

17.157. Failure of officer to comply, penalty—Funds withheld, when.—(1) Any public official or employe who knowingly or intentionally makes, or causes to be made, a false return of information to the bureau shall be punished by confinement in jail for not more than ninety (90) days, by a fine not exceeding $500, or both.

(2) If any public official or employe required to report to the bureau neglects or refuses to comply with the requests of the bureau, or its rules governing record systems and their maintenance, the bureau chief shall give written notice thereof to the person or persons authorized by law to disburse funds of the governmental agency to the public official or employe involved. No funds of the governmental agency shall thereafter be paid to the public official or employe, whether in the form of salary, fees, expenses, compensation, or otherwise, until the bureau chief notifies the disbursing authority that performance of the required duty has been completed. (Enact. Acts 1968, ch. 128, § 6; 1974, ch. 74, Art. V, § 24(9); 1976, ch. 191, § 7.)

OPEN RECORDS

61.870. Definitions.—As used in KRS 61.872 to 61.884:

(1) "Public agency" means every state or local officer, state department, division, bureau, board, commission and authority; every legislative board, commission, committee and officer; every county and city governing body, council, school district board, special district board, municipal corporation, court or judicial agency, and any board, department, commission, committee, subcommittee, ad hoc committee, council or agency thereof; and any other body which is created by state or local authority in any branch of government or which derives at least twenty-five per cent (25%) of its funds from state or local authority.

(2) "Public records" means all books, papers, maps, photographs, cards, tapes, discs, recordings or other documentary materials regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned by a private person or corporation that are not related to functions, activities, programs or operations funded by state or local authority.

(3) "Official custodian" means the chief administrative officer or any other officer or employe of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(4) "Custodian" means the official custodian or any authorized person having personal custody and control of public records. (Enact. Acts 1976, ch. 273, § 1.)

61.872. Right to inspection—Limitation.—(1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884 and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) Any person shall have the right to inspect public records during the regular office hours of the public agency. The official custodian may require written application describing the records to be inspected.

(3) If the person to whom the application is directed does not have custody or control of the public record requested, such person shall so notify the applicant and shall furnish the name and location of the custodian of the public record, if such facts are known to him.

(4) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately so notify the applicant and shall designate a place, time and date, for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time and earliest date on which the public record will be available for inspection.

(5) If the application places an unreasonable burden in producing voluminous public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records. However, refusal under this section must be sustained by clear and convincing evidence. (Enact. Acts 1976, ch. 273, § 2.)

61.874. Abstracts, memoranda, copies—Agency may prescribe fee.—(1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all written public records. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee. If the applicant desires copies of public records other than written records, the custodian of such records shall permit the applicant to duplicate such records, however, the custodian may insure that such duplication will not damage or alter the records.

(2) The public agency may prescribe a reasonable fee for making copies of public records which shall not exceed the actual cost thereof, not including the cost of staff required. (Enact. Acts 1976, ch. 273, § 3.)

61.876. Agency to adopt rules and regulations.—(1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection, and such rules and regulations shall include, but shall not be limited to:

(a) The principal office of the public agency and its regular office hours;

(b) The title and address of the official custodian of the public agency's records;

(c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;

(d) The procedures to be followed in requesting public records.

(2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public.

(3) The executive department for finance and administration may promulgate uniform rules and regulations for all state administrative agencies. (Enact. Acts 1976, ch. 273, § 4.)

61.878. Right of inspection only on order of court.—(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research, in conjunction with an application for a loan, the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans,

appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential, or for the grant or review of a license to do business and if openly disclosed would permit an unfair advantage to competitors of the subject enterprise. This exemption shall not, however apply to records the disclosure or publication of which is directed by other statute.

(c) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the commonwealth. Provided, however, That this exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (b) above.

(d) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired; Provided, however, the law of eminent domain shall not be affected by this provision.

(e) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination before the exam is given or if it is to be given again.

(f) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action. Provided, however that the exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884.

(g) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(h) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(i) All public records or information the disclosure of which is prohibited by federal law or regulation;

(j) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the general assembly.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(4) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental

need or is necessary in the performance of a legitimate government function. (Enact. Acts 1976, ch. 273, § 5.)

61.880. Denial of inspection—Role of attorney general.—(1) Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority and it shall constitute final agency action.

(2) A copy of the written response denying inspection of a public record shall be forwarded immediately by the agency to the attorney general of the commonwealth of Kentucky. If requested by the person seeking inspection, the attorney general shall review the denial and issue within ten (10) days (excepting Saturdays, Sundays and legal holidays) a written opinion to the agency concerned, stating whether the agency acted consistent with provisions of KRS 61.870 to 61.884. A copy of the opinion shall also be sent by the attorney general to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency and the attorney general may request additional documentation from the agency for substantiation. The attorney general may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the attorney general of any actions filed against that agency in circuit court regarding the enforcement of KRS 61.870 to 61.884.

(4) In the event a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the attorney general and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) If the attorney general upholds, in whole or in part, the request for inspection, the public agency involved may institute proceedings within thirty (30) days for injunctive or declaratory relief in the circuit court of the district where the public record is maintained. If the attorney general disallows the request or if the public agency continues to withhold the record notwithstanding the opinion of the attorney general, the person seeking disclosure may institute such proceedings. (Enact. Acts 1976, ch. 273, § 6.)

61.882. Jurisdiction of circuit court in action seeking right of inspection—Burden of proof—Costs—Attorney fees.—(1) The circuit courts of this state shall have jurisdiction to enforce the purposes of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any citizen of this state.

(2) In order for the circuit courts of this state to exercise their jurisdiction to enforce the purposes of KRS 61.870 to 61.884, it shall not be necessary to have forwarded any request for the documents to the attorney general pursuant to KRS 61.880, or for the attorney general to have acted in any manner upon a request for his opinion.

(3) In any such action, the court shall determine the matter de novo and the burden of proof shall be on the public agency to sustain

its action. The court on its own motion, or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(4) Courts shall take into consideration the basic policy of KRS 61.570 to 61.884 that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.870 to 61.884 or otherwise provided for by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others. Except as otherwise provided by law or rule of court, proceedings arising under this section take precedent on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any person who prevails against an agency in any action in the courts seeking the right to inspect and copy any public record may, upon a finding that the records were wilfully withheld in violation of KRS 61.870 to 61.884, be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award such person an amount not to exceed twenty-five dollars ($25.00) for each day that he was denied the right to inspect or copy said public record. The costs or award shall be paid by such person or agency as the court shall determine is responsible for the violation. (Enact. Acts 1976, ch. 273, § 7.)

61.884. **Person's access to record relating to him.**—Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878. (Enact. Acts 1976, ch. 273, § 8.)

15:574.

§ 574.12 Information as to offenders and ex-offenders; confidential

A. The presentence investigation report, the pre-parole report, the information and data gathered by the staff of the board of parole, the prison record and any other information obtained by the board or the Department of Corrections in the discharge of their official duties shall be confidential and shall not be subject to public inspection nor be disclosed directly or indirectly to anyone except as provided by this Section.

B. Information may be released upon request without special authorization to the board of parole, the board of pardons, the governor, the sentencing judge, a district attorney or law enforcement agency, the personnel and legal representatives of the Department of Corrections including student interns, and court officers with court orders specifying the information requested.

C. Fingerprints, photographs and information pertaining to arrests and dispositions of criminal charges may be released to criminal justice agencies without special authorization.

D. The director of the Department of Corrections or his designated representative may approve the reading of confidential information by the following:

(1) Social service agencies assisting in the treatment of the offender or ex-offender,

(2) Appropriate governmental agencies or officials when such access is imperative for discharge of the requesting agency's or official's responsibilities and the information is not reasonably available through any other means.

(3) Approved researchers who have guaranteed in writing anonymity of all subjects.

E. The director of the Department of Corrections or his designated representative may approve the selective reading of information to a private citizen or organization aiding in the rehabilitation of an offender or ex-offender or directly involved in the hiring of the offender or ex-offender under the following conditions:

(1) It appears that the withholding of the information would be to the offender's or ex-offender's disadvantage, and

(2) The requested information is necessary to further the rehabilitation or the likelihood of hiring the offender or ex-offender, and

(3) The requested information is not reasonably available through other means, and

(4) The offender or ex-offender has given his written consent to the release of the information.

F. Whenever records covered by this Section are subpoenaed, the records shall be submitted to the appropriate court for a ruling as to whether the information should be turned over to the party who caused the subpoena to be issued. The court shall make this determination in camera. Should the court find:

(1) That the information is not relevant to the proceedings, or

(2) That the information was derived from communications which were obviously made in the confidence that they would not be disclosed, or

(3) That confidentiality is essential to future useful relations between the source and the recorder of the information, the information shall be withheld.

G. All statistical information and information of a general nature such as an individual's age, physical characteristics, offense, date of conviction, length of sentence and discharge date may be released to the general public at any time.

H. The director of the Department of Corrections is authorized to establish rules and regulations to provide for the orderly administration of this Section.

Amended by Acts 1968, No. 191, § 1; Acts 1975, No. 322, § 1.

PART I. LOUISIANA CRIMINAL JUSTICE INFORMATION SYSTEM

§ 575. Legislative findings and objectives

The legislature hereby finds and declares that:

(1) The sound administration of criminal justice importantly depends upon the effective collection, assimilation and retrieval of available information and its dissemination to appropriate agencies of government.

(2) It is in the public interest that, to the greatest extent possible, government agencies concerned with the detection, apprehension, prosecution, sentencing, confinement and rehabilitation of criminal offenders share among themselves available information relating to such offenders.

(3) At this time, relevant information is contained in many separate and widely dispersed file systems, manually maintained by government agencies throughout the state, and no adequate system now exists for coordinating either the files or the information they contain.

(4) There is a need to improve substantially the coordination of relevant information and to assure that it is disseminated accurately and swiftly, especially in aid of police officials, prosecutors, criminal courts, and probation, correction and parole officials; and

(5) Through the use of electronic data processing and related procedures, a system should be established by which relevant information can be collected, coordinated and made readily available whenever and wherever required in the administration of criminal justice.

Amended by Acts 1972, No. 449, § 1; Acts 1976, No. 302, § 1.

§ 576. Definitions

As used in this part:

(1) The term "system" means the Louisiana Criminal Justice Information System.

(2) The term "qualified agencies concerned with the administration of criminal justice" means courts having criminal jurisdiction, the supreme court, the attorney general, sheriffs' offices, district attorneys' offices, state Department of Corrections, and police forces and departments having responsibility for enforcement of the general criminal laws of the state.

(3) The term "officer" means every district attorney, chief of police, sheriff, marshal, coroner, police officer and all other peace officers.

(4) "Commission" means the Governor's Commission on Law Enforcement and Administration of Criminal Justice.

(5) "Criminal offender record information" shall be understood to include records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, rehabilitation and release. Such information shall be understood to be restricted to that recorded as the result of the initiation of criminal proceedings or of any consequent proceedings related thereto. It shall be understood not to include intelligence, analytical and investigative reports and files nor statistical records and reports in which individuals are not identified and from which their identities are not ascertainable.

Amended by Acts 1972, No. 449, § 1; Acts 1976, No. 302, § 1.

§ 577. Creation of system; functions; powers; duties

There is hereby created within the commission a Louisiana criminal justice information system. The commission may appoint such employees, agents, consultants and special committees as it may deem necessary to properly manage the system.

The system, by and through the commission, shall have the following functions, powers and duties:

(1) To establish, through electronic data processing and related procedures, a system by which relevant information can be collected, coordinated and made readily available to serve qualified agencies concerned with the administration of criminal justice located anywhere in the state. The commission shall prescribe the terms and conditions under which such agencies may contribute and/or gain access to information contained in said system files.

(2) With the approval of the commissioner of the division of administration, that division may enter into agreements to lease or purchase such facilities and equipment as may be necessary to establish, operate and maintain the system.

(3) To upgrade, where feasible, portions of the existing law enforcement communications network.

(4) To adopt such measures to assure the security of the system as may be specified in state and federal regulations.

(5) To connect and exchange traffic with compatible national and state systems and otherwise participate in interstate and national operations.

(6) To adopt and publish for distribution to the system subscribers and other interested parties the operating policies, practices and procedures, and conditions of qualification for data access, provided that the attorney general shall at all reasonable times have access to all information and data of the system.

(7) Prepare and distribute, to all such persons and agencies, forms to be used in reporting data to the system. The forms shall provide for items of information needed by federal and state bureaus or departments engaged in the development of national and state statistics.

(8) Prescribe the form and content of records to be kept by such persons and agencies to insure the correct reporting of data to the system.

(9) Instruct such persons and agencies in the installation, maintenance and use of such records and in the manner of reporting to the system.

(10) Tabulate, analyze and interpret the data collected.

(11) Supply data to federal bureaus or departments engaged in collecting national criminal statistics.

(12) Annually present to the governor and members of the legislature, on or before May 1, a printed report containing the criminal statistics of the preceding calendar year; and present at such other times as the commission may deem wise or the governor or the chairman of the house committee on administration of criminal justice may request reports on special aspects of criminal statistics. A sufficient number of copies of all reports shall be printed for distribution to all public officials in the state dealing with crimes or criminals and for general distribution in the interest of public enlightenment.

(13) To do all other things necessary or convenient to carry out the functions, powers and duties set forth in this section.

Amended by Acts 1972, No. 449, § 1; Acts 1976, No. 302, § 1.

§ 577.1 Annual report

A. The annual report shall contain statistics showing (1) the number and the types of offenses known to the public authorities; and (2) the action taken by law enforcement, judicial, penal and correctional agencies in dealing with criminals.

B. The system staff shall so interpret such statistics and so present the information that it may be of value in guiding the legislature and those in charge of the apprehension, prosecution and treatment of criminals or those concerned with the prevention of crime. The report shall include statistics that are comparable with national criminal statistics published by federal agencies heretofore mentioned.

Added by Acts 1972, No. 449, § 1. Amended by Acts 1976, No. 302, § 1.

§ 578. Duty of peace officers to report to district attorney

It shall be the duty of every city marshal, sheriff, coroner, police officer and all other peace officers to report monthly to the district attorney of the parish upon forms provided for that purpose every crime which shall come to his knowledge.

Amended by Acts 1972, No. 449, § 1; Acts 1976, No. 302, § 1.

1. Construction and application

Sheriff had duty to report to the district attorney crimes of which he had knowledge, such that failure to do so constituted malfeasance in office. State v. Didier, 1971, 259 La. 967, 254 So.2d 262.

Where coroner obtains information concerning crime committed in parish outside his jurisdiction, he should report offense to district attorney who has jurisdiction over the area. Op.Atty.Gen., Oct. 23, 1970.

§ 578.1 Duty of district attorney, chief of police to report to the commission

It shall be the duty of every district attorney on or before the tenth day of each month to summarize in the form or manner prescribed by the commission, the reports required to be submitted to it under the terms of the preceding section.

In cities of ten thousand or more the provisions of this part shall be carried out by the chief of police who shall report directly to the commission in the manner prescribed for the district attorney.

Added by Acts 1972, No. 449, § 1. Amended by Acts 1976, No. 302, § 1.

§ 578.2 Report to the system; duties of persons and agencies

All law enforcement agencies, correctional agencies and institutions, district attorneys and municipal prosecutors, courts having criminal jurisdiction, or

any other public agency dealing with crimes or criminals, when requested by the commission, shall:

(1) Install and maintain records needed for reporting criminal offender record information required by the system.

(2) Report to the system as and when the system prescribes, criminal offender record information required by it.

(3) Give the system access to records for purposes of inspection.

(4) Upon the request of the commission, provide any other such assistance, information and data as will enable the system properly to carry out its powers and duties hereunder.

Added by Acts 1972, No. 449; § 1. Amended by Acts 1976, No. 302, § 1.

§ 579. Crimes to be reported; classification

The crimes which shall be reported under the preceding sections of this part shall include all felonies and such misdemeanors as the commission may designate under such classification as the commission shall direct.

Amended by Acts 1972, No. 449, § 1; Acts 1976, No. 302, § 1.

§ 580. Studies; surveys

In the accomplishment of the purposes of this article, the commission may undertake research and studies independently or in cooperation with any public or private agencies, including educational, civic and research organizations, colleges, universities, institutes or foundations.

Amended by Acts 1972, No. 449, § 1; Acts 1976, No. 302, § 1.

§ 581. Penalties

Any officer or official of a qualified criminal justice agency violating any of the provisions of this Part shall be fined not less than fifty dollars or not more than five hundred dollars.

Amended by Acts 1972, No. 449, § 1; Acts 1976, No. 302, § 1.

§ 581.10 Copies of information to be furnished officers and judges

Upon application the bureau shall furnish a copy of all information available pertaining to the identification and history of any person or persons of whom the bureau has a record or any other necessary information:

(1) to any sheriff or chief police officer of the state or of any local government unit, or to any officer of similar rank and description of any other state, or of the United States, or of any jurisdiction thereof, or of any foreign country, or

(2) to the superintendent or chief officer of any bureau similar in nature to this bureau in any state or in the United States or in any jurisdiction thereof, or in any foreign country, or

(3) to the prosecuting attorney in any court of this state in which a person is being tried for any offense, or

(4) to the judge in any court in this state in which a person is being tried for any offense, or

(5) to the attorney general of this state, or

(6) to the Senate and Governmental Affairs Committee of the Senate of the State of Louisiana in connection with their duties in confirming appointments.

(7) to the Louisiana State Racing Commission in connection with its authorized duties.

Amended by Acts 1972, No. 702, § 1; Acts 1974, No. 8, § 1, emerg. eff. June 10, 1974, at 2:00 P.M.; Acts 1976, No. 258, § 1.

§ 840.1 Access to records; cooperation by other agencies; confidentiality; disclosure

A. During the course of any investigation which the Department of Corrections is authorized by law to conduct, or any investigation necessary to the rehabilitation of persons in the custody of the Department of Corrections, said department shall have access to information and records under the control of any state or local agency which are reasonably related to the rehabilitation of the individual, which information shall be maintained in the file or case record of the offender. This information shall include circumstances attending the commission of the offense for which the offender was or is to be incarcerated, placed on probation, or released on parole, subsequent offenses that occur while under supervision, the offender's history of delinquency, or criminality as a juvenile and adult, his family situation and background, economic and employment status, education, personal habits, the condition of the offender's physical and mental health, and other matters deemed relevant to his rehabilitation.

B. Local and state law enforcement agencies, courts, welfare and social service agencies, juvenile agencies and mental, health and correctional institutions shall furnish to the Department of Corrections criminal or delinquency records, mental or health records, and such other relevant information as the department requests.

C. All information obtained under this provision shall be held as confidential and shall not be disclosed directly or indirectly to anyone except in accordance with R.S. 15:574.12.

Added by Acts 1974, No. 201, § 1.

PART II. STATE BUREAU OF CRIMINAL IDENTIFICATION

Comparative Laws

Ariz.—A.R.S. § 13-1241 et seq.
Ill.—S.H.A. ch. 38, § 206—1.
Iowa—I.C.A. § 749.1 et seq.
Minn.—M.S.A. § 626.32 et seq.

§ 581.1 Bureau of criminal identification; personnel

There is created a bureau of criminal identification, investigation, and statistics in the Department of State Police to be known as the Bureau of Identification. The Superintendent of State Police shall employ and appoint all personnel necessary for the efficient operation of the bureau.

§ 581.2 Local enforcement officials to transmit information

Every sheriff and every chief police officer of the state and of any local government unit shall transmit to the bureau, so far as available:

A. The names, fingerprints, photographs, and any other data, which the superintendent of state police may from time to time prescribe, of all persons arrested for, or suspected of:

(1) An indictable offense; or any nonindictable offense which is, or may hereafter be, included in the compilations of the Division of Investigation of the U. S. Department of Justice;

(2) Being fugitives from justice;

(3) Being vagrants;

(4) Being habitual users of narcotics, or other habit-forming drugs;

(5) Being in possession of stolen goods or of goods believed to have been stolen; and

(6) Being in possession of illegal or illegally carried weapons; or in possession of burglar's tools, tools for the defacing or altering of the numbers on automobiles, automobile parts, automobile engines, or automobile engine parts; or illegally in possession of tools, supplies, or other articles used in the manufacture or alteration of counterfeit money or bank notes; or illegally in possession of high power explosives, infernal machines, bombs, or other contrivances reasonably believed by the arresting person to be intended to be used for unlawful purposes.

B. The fingerprints, photographs, and other data prescribed by the superintendent of state police concerning unidentified dead persons, and insofar as available, of missing persons.

C. A record of the indictable offenses and of any non-indictable offenses which are, or may hereafter be, included in the compilation of the Division of Investigation of the United States Department of Justice, and which are committed within the jurisdiction of the reporting officer, including a statement of the facts of the offense and a description of the offender, so far as known, the offender's methods of operation, the official action taken, and any other information which the superintendent of state police may require.

D. Copies of any reports which are now required by law to be made or may hereafter be so required, and which shall be prescribed by the superintendent of state police, to be made by pawnshops, second-hand dealers and dealers in weapons.

E. Lists of stolen automobiles and of automobiles recovered, with their engine and serial numbers, description, and other identification data, and lists of any other classes of stolen property which the superintendent of state police shall prescribe.

§ 581.3 Court officials to transmit statistics and information

Every clerk of a court having original or appellate jurisdiction over indictable offenses, or, if there be no clerk, every judge or justice, shall transmit to the bureau, any statistics and information which the superintendent of state police shall prescribe regarding indictments and informations filed in court and the disposition made of them, pleas, convictions, acquittals, committals, probations granted or denied, and any other dispositions of criminal proceedings made in court.

§ 581.4 Coroners to transmit statistics and information

Every coroner shall transmit to the bureau all statistics and information, which the superintendent of state police shall prescribe, regarding autopsies performed, inquests held, and verdicts rendered.

§ 581.5 Institution heads and probate officers to transmit information

Every person in responsible charge of an institution to which there are committed persons convicted of crime or juvenile delinquency or declared to be criminally insane, or to be feebleminded delinquents, and every probate officer shall transmit to the bureau:

(1) The names, fingerprints, photographs, and other data prescribed by the superintendent of state police, concerning all persons who are received in their institutions for the violation of an indictable offense or who are placed on probation for an indictable offense.

(2) Full reports of all transfers to or from the institutions, paroles granted and revoked, discharges from the institutions or from parole, commutations of sentence, and pardons, of all persons received in one of these institutions for violation of an indictable offense. As amended Acts 1954, No. 459, § 1.

§ 581.6 Time and forms for furnishing information

The superintendent of state police shall designate the time or period within which the information and reports required under this Part shall be furnished. He shall determine the number of copies required and shall prescribe the forms to be used, which shall conform where appropriate to the uniform systems of criminal statistics of the United States Department of Justice and the United States Bureau of the Census. The bureau shall supply the officers and officials with the proper forms.

§ 581.7 Investigations by bureau authorized; access to public records

Any employee of the bureau, upon written authorization by the superintendent of state police may enter any institution to which persons convicted of crime or declared to be criminally insane, or to be feeble-minded delinquents have been committed, to take or cause to be taken fingerprints or photographs or to make investigation relative to any person confined therein, for the purpose of obtaining information which will lead to the identification of criminals; and every person who has charge or custody of public records or documents from which it may reasonably be supposed that information described in this Part can be obtained, shall grant access thereto to any employee of the bureau, upon written authorization by the superintendent of state police, or shall produce the public records or documents for the inspection and examination of the employee.

§ 581.8 Reports and records to be kept by bureau

The bureau shall file all information and statistics received by it and shall make a complete and systematic record and index thereof, to the end of providing a method of convenient reference and consultation. So far as practicable the records shall coincide in form with those of the Federal Bureau of Identification of the United States Department of Justice, in order to facilitate interchange of records. No information identifying a person received by the bureau, except as provided by R.S. 15:581.9 may be destroyed or surrendered by it until five years after the person identified is known or reasonably believed to be dead.

§ 581.9 Civil identification files

The bureau shall accept and file the names, fingerprints, photographs, and other personal identification data submitted voluntarily by individuals or submitted by parents on behalf of their children for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory, or change of appearance. Upon the application of a person identified under the provisions of this section all data received under this section with relation to him shall be surrendered to him.

§ 581.10 Copies of information to be furnished officers and judges

Upon application the bureau shall furnish a copy of all information available pertaining to the identification and history of any person or persons of whom the bureau has a record, or any other necessary information:

(1) to any sheriff or chief police officer of the state or of any local government unit, or to any officer of similar rank and description of any other state, or of the United States, or of any jurisdiction thereof, or of any foreign country, or

(2) to the superintendent or chief officer of any bureau similar in nature to this bureau in any other state or in the United States or in any jurisdiction thereof, or in any foreign country, or

(3) to the prosecuting attorney in any court of this state in which a person is being tried for any offense, or

(4) to the judge in any court of this state in which a person is being tried for any offense.

§ 581.11 Information in regard to identification of deceased or injured persons

If any officer or official described in this Part shall transmit to the bureau the identification data of any unidentified deceased or injured person or any person suffering from loss of memory, the bureau shall furnish to the officer or official any information available pertaining to the identification of this person.

§ 581.12 Transmission of information

Although no application for information has been made to the bureau, the bureau may transmit any information which the superintendent of state police shall in his discretion designate, to persons who are authorized under R.S. 15:581.10 to make application for it and designated by the superintendent of state police.

§ 581.13 Cooperation with federal and other bureaus

The bureau shall cooperate with the Division of Investigation of the United States Department of Justice and with similar bureaus in other states and cities toward the end of developing and carrying on a complete interstate, national, and international system of criminal identification and investigation; and further toward attaining this end, every sheriff and every chief police officer of the state and of any local government unit shall speedily transmit directly to the Division of Investigation of the United States Department of Justice duplicate copies of all the information and data which the Division of Investigation shall from time to time request.

§ 581.14 Bureau to assist officials; scientific crime laboratory facilities authorized

On the request of any sheriff or chief police officer of the state or any local government unit, the superintendent of state police may direct the bureau to assist the officer

(1) in the establishment of local identification and records system;

(2) in investigating the circumstances of any crime and in the identification, apprehension, and conviction of the perpetrator or perpetrators of any crime, and for this purpose may detail any employee or employees of the bureau for any length of time the superintendent of police may deem fit; and

(3) without request the superintendent of state police shall, at the direction of the governor, detail any employee or employees, for any length of time which the governor may deem fit, to investigate any crime within the state, for the purpose of identifying, apprehending, and convicting the perpetrator or perpetrators.

For these purposes the superintendent of state police may direct the bureau to organize and maintain scientific crime laboratory facilities.

§ 581.15 Operation and coordination of communication systems

For the purpose of expediting local, state, national, and international efforts in the detection and apprehension of criminals, the bureau may operate and coordinate all communication systems which may be required in the normal conduct of its duties.

§ 581.16 Certified copies of records admissible in evidence

Any copy of a record, picture, photograph, fingerprint, or other paper or document in the files of the bureau certified by the superintendent of state police to be a true copy of the original shall be admissible in evidence in any court of this state in the same manner as the original might be.

§ 581.17 Access to records of bureau limited

Only employees of the bureau and persons specifically authorized by the superintendent of state police shall have access to the files or records of the bureau. No file of record or information shall be disclosed by any employee of the bureau except to officials as provided in this Part and except as may be deemed necessary by the superintendent of state police in the apprehension or trial of persons accused of offenses or in the identification of persons or of property.

§ 581.18 Disposition of rewards

No reward offered for the apprehension or conviction of any person or for the recovery of any property may be accepted by any employee of the bureau, but any reward to which an employee would otherwise be entitled shall be received by the bureau and turned over to the state treasury to be credited to the State Police Retirement Fund.

§ 581.19 Authority to take fingerprints, photographs, and other data

All sheriffs, police officers, court officials, coroners, probate officers, institution heads, and employees of the bureau, who have been authorized to enter institutions to procure information, shall take or cause to be taken the fingerprints, photographs, and other data of the persons about whom they are required to transmit reports to the bureau.

§ 581.20 Neglect or refusal to perform duties

Any person who neglects, or refuses, to make any report lawfully required of him under the provisions of this Part, or to do or perform any other act so required to be done or performed by him, or who shall hinder or prevent another from doing an act so required to be done by that other, shall be subject to removal from office.

§ 581.21 Giving false information or withholding information; mutilating records

No person shall wilfully give any false information or wilfully withhold information in any report lawfully required of him under the provisions of this Part, or remove, destroy, alter, or mutilate any file or record of the bureau.

Whoever violates this Section shall be fined not more than twenty-five dollars or imprisoned for not more than thirty days, or both.

15 § 1201. Louisiana Commission on Law Enforcement and Administration of Criminal Justice

The Louisiana Commission on Law Enforcement and Administration of Criminal Justice is hereby created and established.
Added by Acts 1976, No. 592, § 1.

§ 1202. Composition of commission

The commission shall consist of such professional and lay persons appointed by the governor as may have a vital concern with with law enforcement and the administration of criminal justice. Appointment shall be made in accordance with guidelines prescribed by the Law Enforcement Assistance Administration, except however, no planning district shall be represented by more than four members and the total membership shall not exceed fifty. The members shall serve at the pleasure of the governor. Members shall serve without compensation, per diem, or travel reimbursement.
Added by Acts 1976, No. 592, § 1.

§ 1203. Officers; meetings

A. The governor shall appoint a chairman and vice chairman to serve at his pleasure, from the commission members. The chairman shall be the chief executive officer of the commission. The vice chairman shall function as the chief executive officer of the commission upon direction of the chairman.

B. The domicile of the commission shall be in Baton Rouge. The commission shall hold public meetings monthly except as provided by vote of the commission or by order of the chairman.
Added by Acts 1976, No. 592, § 1.

§ 1204. Functions

The functions of the commission shall be to:

(1) Bring together those persons most familiar with problems of law enforcement and the administration of criminal justice, including the disposition and treatment of persons convicted of crime, for the purpose of studying and encouraging the adoption of methods by which law enforcement can be made more effective and justice administered more efficiently and fairly, to the end that citizens may be more fully protected.

(2) Stimulate, promote, and organize citizen participation in the improvements and extension of law enforcement, corrections, rehabilitation, and the work of the courts.

(3) Recommend and assist in improvements with respect to the recruitment and training of law enforcement officers and other law enforcement personnel.

(4) Recommend methods by which cooperation may be furthered between federal, state, and local law enforcement officials.

(5) Assist in planning coordinated programs throughout the state in areas relating to the police, the courts, and corrections.

(6) Encourage public understanding of the responsibilities and problems of law enforcement officers and law enforcement and criminal justice agencies and the development of greater public support for their efforts.

(7) Aid in publicizing and promoting practices in the treatment of criminal offenders which will do most to prevent a return to criminal activity.

(8) Oversee, review, and approve the preparation of the state plan and its implementation.

(9) Approve or deny applications for grants of block funds provided for by the Omnibus Crime Control and Safe Streets Act of 1968, as amended,[1] and the Juvenile Justice and Delinquency Prevention Act of 1974.[2]

(10) Adopt bylaws regulating the conduct of commission business.

(11) Insure that the state agency portion of Law Enforcement Assistance Administration action grant funds is divided equitably among the state law enforcement agencies and insure that the presently established local agency portion is allocated equitably throughout the state; however, the presently established funding division of Law Enforcement Assistance Administration action grant funds between state and local agencies shall not be changed except by executive authority.

(12) Carry out the objectives of Public Law 90-351, as amended, the Omnibus Crime Control and Safe Streets Act, the Juvenile Justice and Delinquency Prevention Act of 1974, and other federal and state programs which promote the improvement of criminal or juvenile justice as the governor or legislature may direct.
Added by Acts 1976, No. 592, § 1.

§ 1205. State Law Enforcement Planning Agency

Within the Louisiana Commission on Law Enforcement and Administration of Criminal Justice, there shall be a State Law Enforcement Planning Agency (SLEPA), which shall serve as the staff of the commission.
Added by Acts 1976, No. 592, § 1.

§ 1206. Composition of State Law Enforcement Planning Agency

A. The governor shall appoint an executive director of the planning agency who shall serve at the pleasure of the governor and who shall be the chief executive officer of the commission staff. He shall take all necessary action and devote his full time to assisting the commission in performing its duties and fulfilling its responsibilities, including staff recruitment, training and direction. The executive director shall be the appointing authority for commission staff and shall exercise administrative supervision over the district program directors, who shall be responsible to him for the accomplishment of all tasks assigned to the law enforcement planning district agencies by the State Law Enforcement Planning Agency, including the preparation of district plans and the preparation of projects in the respective law enforcement planning districts. The executive director shall have final authority on matters pertaining to the employment, termination of employment, and wages paid to professional staff members of the law enforcement planning district agencies, with the exception of such district staff as shall be covered by state or local civil service. The executive director shall fill vacancies which occur among professional staff of law enforcement planning districts from a list of at least three (3) names recommended by the local advisory council. Additionally, the executive director shall have the authority to award state agency grants in the amount of $10,000 or less with approval by the governor. Such grant awards must be consistent and compatible with the state plan.

B. The staff of the commission shall consist of necessary professional, administrative, and clerical personnel to accomplish required planning and plan implementation for each of the major law enforcement components, administration of the state subgrant program to local units of government, and for all other planning agency responsibilities. Staff members of the SLEPA shall be subject to the supervision of the executive director and shall perform duties directed by him.

Added by Acts 1976, No. 592, § 1.

§ 1207. Functions of the staff

The functions of the staff of the commission shall include but not be limited to the following:

(1) Preparation, development, and revision of comprehensive plans based on an evaluation of law enforcement and criminal justice problems within the state.

(2) Definition, development, and correlation of action programs under such plans.

(3) Establishment of priorities for law enforcement and criminal justice improvement in the state.

(4) Providing information to prospective aid recipients on procedures for grant application.

(5) Encouraging grant proposals from local units of government for law enforcement and criminal justice planning and improvement efforts.

(6) Encouraging project proposals from state law enforcement and criminal justice agencies.

(7) Evaluation of applications for aid and awarding of funds to units of government and other eligible applicants.

(8) Monitoring progress and expenditures under grants to state law enforcement agencies, local units of government, and other recipients of Law Enforcement Assistance Administration grant funds.

(9) Encouraging regional, local, and metropolitan area planning efforts, action projects, and cooperative arrangement.

(10) Coordination of the state's law enforcement and criminal justice plan with other federally supported programs relating to or having an impact on law enforcement and criminal justice.

(11) Oversight and evaluation of the total state effort in plan implementation and law enforcement improvement.

(12) Provide technical assistance and services for programs and projects contemplated by the state plan and by units of general local government.

(13) Collecting and analyzing statistics and other data relevant to law enforcement and criminal justice in the state.

(14) Performing any other functions required by federal guidelines or state law.

Added by Acts 1976, No. 592, § 1.

Library References
States ⇨66.
C.J.S. States §§ 58 et seq., 81.

§ 1208. Law enforcement planning districts

The following law enforcement planning districts are designated and established:

(1) Orleans Law Enforcement Planning District, consisting of Orleans Parish.

(2) Capital Law Enforcement Planning District, consisting of Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, Tangipahoa, Washington, West Feliciana, and West Baton Rouge parishes.

(3) Metropolitan Law Enforcement Planning District, consisting of Assumption, Jefferson, Lafourche, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany, and Terrebonne parishes.

(4) Evangeline Law Enforcement Planning District, consisting of Acadia, Evangeline, Iberia, Lafayette, St. Landry, St. Martin, St. Mary, and Vermilion parishes.

(5) Southwest Law Enforcement Planning District, consisting of Allen, Beauregard, Calcasieu, Cameron, and Jefferson Davis parishes.

(6) Red River Delta Law Enforcement Planning District, consisting of Avoyelles, Catahoula, Concordia, Grant, LaSalle, Rapides, Winn, and Vernon parishes.

(7) Northwest Law Enforcement Planning District, consisting of Bienville, Bossier, Caddo, Claiborne, DeSoto, Lincoln, Natchitoches, Red River, Sabine, and Webster parishes.

(8) North Delta Law Enforcement Planning District, consisting of Caldwell, Franklin, Jackson, Madison, Morehouse, Ouachita, Tensas, Richland, Union, East Carroll, and West Carroll parishes.

Added by Acts 1976, No. 592, § 1.

§ 1209. Law enforcement planning district agencies

A. The planning agencies for the planning districts shall be those heretofore or hereafter recognized as such by the governor. The local agency portion of Law Enforcement Assistance Administration planning grant funds shall be divided equitably among the districts; however, the division of planning grant funds between the State Law Enforcement Planning Agency and the local law enforcement planning district agencies in effect on the effective date of this Section shall not be changed except by executive authority or in accordance with federal law.

B. The law enforcement planning district agency staff shall consist of a district program director and such other administrative and clerical personnel whose services are required on a full-time basis in the accomplishment of law enforcement planning and administrative functions.

C. The district planning agencies shall have all of the functions of the state planning agency that are applicable within their respective districts as may be approved by the State Law Enforcement Planning Agency.

Added by Acts 1976, No. 592, § 1.

§ 1210. Law enforcement planning district advisory councils; composition

A law enforcement planning district advisory council is hereby created and established for each law enforcement planning district agency. These coun-

cils shall be composed in accordance with the guidelines prescribed by the Law Enforcement Assistance Administration.
Added by Acts 1976, No. 592, § 1.

§ 1211. Purpose and function of advisory councils

Law enforcement planning district advisory councils shall perform functions similar to those prescribed for the commission in planning, developing, coordinating, and administering criminal justice improvement programs within their respectve law enforcement planning districts. They shall:

(1) Review, approve, and submit the comprehensive district law enforcement plan and projects to implement that plan in accordance with district problems, needs, and goals, and with such format, schedule, description, and other specifics as the State Law Enforcement Planning Agency may require.

(2) Identify criminal justice problems and needs in the district and encourage, support, and assist with programs and projects proposed by appropriate public entities toward resolving such problems and needs.

(3) Inform the SLEPA promptly and completely on all matters in the district affecting and/or affected by the SLEPA and its mission and advise the SLEPA in such matters.

(4) Inform public and private entities in the district affecting and/or affected by the SLEPA in any instance promptly and completely of the SLEPA's mission, policies, and action and advise such entities in criminal justice matters.

(5) Administer and monitor progress and/or changes in district projects on the basis of guidelines developed by the SLEPA.

(6) Make recommendations to the executive director of the State Law Enforcement Planning Agency on matters relating to the employment, termination of employment, and wages paid to professional staff members of the law enforcement planning district agency;

(7) Review and accept the district budget from the State Law Enforcement Planning Agency and assume responsibility for administering the district budget in conformity with state and federal requirements.

(8) Form task forces or committees to assist in planning, analysis, policy, and goal recommendations, and perform such other functions as the SLEPA deems necessary; appoint the chairmen of these task forces and committees and assure the satisfactory performance of each.

(9) Establish bylaws in compliance with the articles of incorporation specifically dealing with membership, including composition, method and duration of appointment; task force and special committee appointment, structure, and composition.

(10) Perform other functions in accordance with state and federal policy.
Added by Acts 1976, No. 592, § 1.

44:1 PUBLIC RECORDS AND RECORDERS

§ 1. General definitions

A. All records, writings, accounts, letters and letter books, maps, drawings, memoranda and papers, and all copies or duplicates thereof, and all photographs or other similar reproductions of the same, having been used, being in use, or prepared for use in the conduct, transaction or performance of any business, transaction, work, duty or function which was conducted, transacted or performed by or under the authority of the Constitution or the laws of this state, or the ordinances or mandates or orders of any municipal or parish government or officer or any board or commission or office established or set up by the Constitution or the laws of this state, or concerning or relating to the receipt or payment of any money received or paid by or under the authority of the Constitution or the laws of this state are public records, subject to the provisions of this Chapter except as hereinafter provided.

B. All electric logs produced from wells drilled in search of oil and gas which are filed with the Commissioner of Conservation shall remain confidential upon the request of the owner so filing for periods as follows:

For wells shallower than fifteen thousand feet a period of one year, plus one additional year when evidence is submitted to the Commissioner of Conservation that the owner of the log has a leasehold interest in the general area in which the well was drilled and the log produced; for wells fifteen thousand deep or deeper, a period of two years, plus two additional years when evidence is submitted to the Commissioner of Conservation that the owner of the log has such an interest in the general area in which the well was drilled and the log produced; provided however that no release will be required of logs produced from wells drilled in the off-shore area.

At the expiration of time in which any log or logs shall be held as confidential by the Commissioner of Conservation as provided for above said log or logs shall be placed in the open files of the Department of Conservation and any party or firm shall have the right to examine and/or reproduce, at their own expense, copies of said log or logs by photography or other means not injurious to said records.

Amended by Acts 1973, No. 135, § 1; Acts 1973, Ex.Sess., No. 4, § 1.

§ 3. Records of prosecutive, investigative, and law enforcement agencies

A. Nothing in this Chapter shall be construed to require disclosure of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, marshals, investigators, correctional agencies, investigative agencies, or intelligence agencies of the state, which records are:

(1) Records pertaining to pending criminal litigation or any criminal litigation which can be reasonably anticipated, until such litigation has been finally adjudicated or otherwise settled; or

(2) Records containing the identity of a confidential source of information or records which would tend to reveal the identity of a confidential source of information; or

(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, or internal security information.

B. All records, files, documents, and communications, and information contained therein, pertaining to or tending to impart the identity of any confidential source of information of any of the state officers, agencies, or departments mentioned in Paragraph A above, shall be privileged, and no court shall order the disclosure of same except on grounds of due process or constitutional law. No officer or employee of any of the officers, agencies, or departments mentioned in Paragraph A above shall disclose said privileged information or produce said privileged records, files, documents, or communications, except on a court order as provided above or with the written consent of the chief officer of the agency or department where he is employed or in which he holds office, and to this end said officer or employee shall be immune from contempt of court and from any and all other criminal penalties for compliance with this paragraph.

C. Whenever the same is necessary, judicial determination pertaining to compliance with this section or with constitutional law shall be made after a contradictory hearing as provided by law. An appeal by the state or an officer, agency, or department thereof shall be suspensive.

D. Nothing in this section shall be construed to prevent any and all prosecutive, investigative, and law enforcement agencies from having among themselves a free flow of information for the purpose of achieving coordinated and effective criminal justice.

Amended by Acts 1972, No. 448, § 1.

§ 9. Records of violations of municipal ordinances and of state statutes classified as misdemeanors

A. Any person who has been arrested for the violation of a municipal ordinance or for violation of a state statute which is classified as a misdemeanor may make a written motion to the district court for the parish in which he was arrested for expungement of the arrest record, if:

(1) The time limitation for the institution of prosecution on the offense has expired, and no prosecution has been instituted; or

(2) If prosecution has been instituted, and such proceedings have been finally disposed of by dismissal, sustaining of a motion to quash, or acquittal.

If the court finds that the mover is entitled to the relief sought, for either of the above reasons, it shall order all agencies and law enforcement offices having any record of the arrest, whether on microfilm, computer card or tape, or on any other photographic, electronic or mechanical method of storing data, to destroy any record of arrest, photograph, fingerprint or any other information of any and all kinds or descriptions. The court shall order such custodians of records to file a sworn affidavit to the effect that the records have been destroyed and that no notations or references have been retained in the agency's central repository which will or might lead to the inference that any record ever was on file with any agency or law enforcement office. The original of this affidavit shall be kept by the court so ordering same and a copy shall be retained by the affiant agency which said copy shall not be a public record and shall not be open for public inspection but rather shall be kept under lock and key and maintained only for internal record keeping purposes to preserve the integrity of said agency's files and shall not be used for any investigative purpose. This Subsection does not apply to arrests for a first or second violation of any ordinance or statute making criminal the driving of a motor vehicle while under the influence of alcoholic beverages or narcotic drugs, as denounced by R.S. 14:98.

B. Any criminal court of record in which there was a nolle prosequi, an acquittal, or dismissal of a crime set forth above shall at the time of discharge of a person from its control, enter an order annulling, cancelling, or rescinding the record of arrest, and disposition, and further ordering the destruction of the arrest record and order of disposition. Upon the entry of such an order the person against whom the arrest has been entered shall be restored to all civil rights lost or suspended by virtue of the arrest, unless otherwise provided in this section, and shall be treated in all respects as not having been arrested.

C. Notwithstanding any other provision of this section to the contrary, the provisions of this section shall in no case be construed to effect in any way whatsoever the practices and procedures in effect on July 29, 1970, relating to the administration of the implied consent law.

D. Whoever violates any provisions of this section shall be punished by a fine of not more than two hundred fifty dollars or by imprisonment of not more than ninety days, or both, if the conviction is for a first violation; second and subsequent violations shall be punished by a fine of not more than five hundred dollars or imprisonment of six months, or both.

Added by Acts 1970, No. 445, § 1. Amended by Acts 1972, No. 715, §§ 2, 3; Acts 1974, No. 531, § 1; Acts 1976, No. 678, § 1.

§ 10. Confidential nature of documents and proceedings of judiciary commission

All documents filed with, and evidence and proceedings before the judiciary commission are confidential. The record filed by the commission with the supreme court and proceedings before the supreme court are not confidential.

Added by Acts 1975, No. 55, § 1.

§ 37. Penalties for violation by custodians of records

Any person having custody or control of a public record, who violates any of the provisions of this Chapter, or any person not having such custody or control who by any conspiracy, understanding or cooperation with any other person hinders or attempts to hinder the inspection of any public records declared by this Chapter to be subject to inspection, shall upon first conviction be fined not less than one hundred dollars, and not more than one thousand dollars, or shall be imprisoned for not less than one month, nor more than six months. Upon any subsequent conviction he shall be fined not less than two hundred fifty dollars, and not more than two thousand dollars, or imprisoned for not less than two months, nor more than six months, or both.

§ 38. Penalties for violation by electors and taxpayers

Any elector or taxpayer, or any agent of either, who after exercising the right granted by this Chapter violates any of its provisions shall be fined not less than twenty-five dollars, nor more than two thousand dollars, or be imprisoned not less than ten days, nor more than two months, or both, and he shall forfeit the right granted by this Chapter for a period of six months from the day of the conviction.

AM J. GUSTE, JR.
ORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge
70804

July 1, 1974

TO: All Law Enforcement, Prosecutors, Courts, Probation/Parole and Correctional Agencies Having Access to and Responsibility for the Security of Criminal Offender Record Information.

Concerned about the potential misuse of criminal justice data on individuals made possible by rapid automation of criminal data systems and accelerating computer technology, Congress added an amendment to the Omnibus Crime Control and Safe Streets Act of 1970 directing the U.S. Department of Justice to draft legislation for consideration by the Congress to insure the security and confidentiality of individualized criminal data. As a result, two highly significant bills, (S. 2963) by Senator Ervin (N.C.) and (S. 2964) by Senator Hruska (Neb.), have been introduced defining the parameters of security and confidentiality in criminal justice information systems. In a separate but related action, the Law Enforcement Assistance Administration (LEAA) published its' guidelines on the same subject in the February 14, 1974 Federal Register. These guidelines will determine standards for federal, state and local criminal data systems until and unless superseded by federal legislation.

Computerized criminal justice information systems are essential to the effective administration of criminal justice and their use should be encouraged and facilitated as well as regulated by law. These systems can be operated in such a way as to meet all the legitimate information needs of criminal justice agencies while providing adequate system security and protection against unreasonable invasions of personal privacy.

Section 577 of Part 1 of Chapter 6 of Title 15 of the Louisiana Revised Statutes of 1950, as amended requires that the Department of Justice (Office of the Attorney General) "adopt such measures to assure the security of the system as may be specified in state and federal regulations".

With this in mind, I have caused to be issued the attached Privacy and Security Regulations which are designed to insure the protection of an individual's computerized criminal offender record from improper or illegal use.

Respectfully submitted,

WILLIAM J. GUSTE, JR.,
ATTORNEY GENERAL

LCJIS PRIVACY/SECURITY REGULATIONS

The enclosed regulations were designed to serve the purpose of protecting the automated record of an individual criminal offender from improper and/or illegal use. Beginning with a definition of the contents of the offender's criminal record, these regulations also clearly define and delegate authority for access to this information. Procedures are provided to change the record in the event of inaccurate content, and allow unauthorized persons or agencies who wish to access the record for legitimate reasons to obtain access. Security measures that must be taken to protect the record, including computer programming and personnel security as well as training requirements for systems personnel are fully described. Finally, a regulation is set forth herein which defines a function of the Attorney General's office to inform and educate the general public about the Privacy and Security Regulations.

All Louisiana criminal justice agencies are expected to conform with these regulations and any amendment to such. Please be advised that all agencies in the enclosed mailing list with asterisks beside their name will be furnished an information copy only and will not receive updates or amendments. All other agencies will receive one copy of the regulations and any forthcoming amendments. Agencies are authorized to reproduce these regulations for any additional copy needs.

Louisiana Department of Justice
Room 502, 1885 Wooddale Blvd.
Baton Rouge, Louisiana 70805
July 1, 1974

TABLE OF CONTENTS AND SUBJECT INDEX

PURPOSE: This regulation sets forth an index to all LCJIS Regulations Series 1 by both numerical order and subject matter.

1. Table of Contents

In order to protect these records from illegal use, persons having access to the records must sign a non-disclosure agreement. Action taken for violation of this privileged information is defined in the administrative penalties.

Appendix A LCJIS Form No. 1: Review of Criminal Offender Record Information

Appendix B LCJIS Form No. 2: Exceptions Taken to Criminal Offender Record Information

Appendix C LCJIS Form No. 3: Notice of Results of Audit of Criminal Offender Record Information

1-07 LISTING OF AGENCIES TO WHICH CRIMINAL OFFENDER RECORD INFORMATION HAS BEEN DISSEMINATED

PURPOSE: This regulation defines the procedure for listing of agencies to which criminal offender record information has been disseminated.

1-08 SEGREGATION OF COMPUTERIZED FILES AND THEIR LINKAGE TO INTELLIGENCE FILES

PURPOSE: This regulation defines the type of computer recommended for use in the storage of criminal offender record information and the linkage of these records to intelligence files.

1-09 PROGRAMMING SECURITY

PURPOSE: This regulation defines the procedures for programming security in order to assure the continued security of criminal offender record information under their control. These procedures will include, but not be limited to the following: terminal and operator identification, data storage, data entry, and file protection software.

1-10 PHYSICAL SECURITY

PURPOSE: This regulation defines physical security in terms of protection from accidental loss and intentional damage to the system.

1-11 PERSONNEL SECURITY

PURPOSE: This regulation defines the procedure by which personnel security is achieved and maintained. The procedure includes employment screening, clearance, annual review/security manual and in-service training, and system discipline.

1-12 TRAINING OF SYSTEM PERSONNEL

PURPOSE: This regulation defines the length of time and the type of training all persons involved in the direct operation of a criminal offender record information system shall receive.

1-13 PUBLIC EDUCATION

PURPOSE: This regulation defines a function of the Attorney General which is to conduct an appropriate program of public education concerning the purposes, proper use and control of criminal offender record information.

2. Subject Index

July 1, 1974

1-03 General Regulation

1-07 Listing of Agencies to Which Criminal Offender Record Information has been Disseminated

1-11 Personnel Security

1-10 Physical Security

1-09 Programming Security

1-13 Public Education

1-08 Segregation of Computerized Files and Their Linkage to Intelligence Files

1-10 Table of Contents and Subject Index

1-12 Training of System Personnel

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved: _____
Honorable William J. Guste, Jr.
Attorney General

Louisiana Department of Justice
Room 502, 1885 Wooddale Blvd.
Baton Rouge, La. 70806
July 1, 1974

ADMINISTRATIVE PROCEDURES

PURPOSE: This regulation sets forth the requirements and procedures for the issuance of new and/or revised regulations.

Authority

Revision notices, changes and/or issuance of new regulations must have the final approval of the LCJIS Policy Board and the Attorney General.

Procedure for Changes

1. Recommended changes to these regulations shall be directed to the Chairman, LCJIS Privacy/Security Committee, Room 502, 1885 Wooddale Blvd., Baton Rouge, La. 70806.

2. All recommended changes will be presented to the Privacy/Security Committee for review. They will then forward their recommendations along with the request to the LCJIS Policy Board for review and approval/disapproval action. Upon approval, the document will be sent to the Attorney General for final approval, publication and distribution.

3. All disapproved requests will be returned to the originator with appropriate comments as to the reason(s) for disapproval.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved: _____
Honorable William J. Guste, Jr.
Attorney General

Louisiana Department of Justice
Room 502, 1885 Wooddale Blvd.
Baton Rouge, La. 70806
July 1, 1974

GENERAL REGULATION

PURPOSE: This is a general regulation limiting the applicability of all LCJIS Regulations Series 1 to the State of Louisiana and to the rules of evidence and procedure of that state.

1. Limitation to this State
Except as otherwise provided in these regulations or in any applicable statutory provision, these regulations shall be applicable only within this state, and all references to criminal justice agencies shall, unless otherwise provided, be understood to mean such agencies organized and operating under the laws of this state.

2. Rules of Evidence and Procedure
Except as otherwise provided in these regulations or in any applicable statutory provisions, or except as the Department may otherwise decide, the rules of evidence and procedure applicable to any hearings or inquiries conducted by the Department or LCJIS Privacy/Security Committee shall be those in use for civil proceedings in the courts of this state at the time of the hearing or inquiry.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved: _____
Honorable William J. Guste, Jr.
Attorney General

Louisiana Department of Justice
Room 502, 1885 Wooddale Blvd.
Baton Rouge, La. 70806
July 1, 1974

DEFINITIONS

PURPOSE: This regulation defines the technical terms for all LCJIS Regulations Series 1.

Definitions for purposes of these regulations:

1. The term "criminal justice agencies" means only those public agencies at all levels of government which perform as their principal function activities (i) relating to the apprehension, prosecution, adjudication, or rehabilitation of criminal offenders; or (ii) relating to the collection, storage, dissemination or usage of criminal offender record information. This definition includes, at the local or regional level, municipal law enforcement agencies, sheriffs, district or city courts having a criminal jurisdiction, district attorneys, city prosecutors, probation departments and parish and multi-parish prisons. State agencies in this category are the Division of State Police of the Department of Public Safety, Department of Corrections, Supreme Court and Department of Justice.

2. The term "criminal offender record information" means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, rehabilitation and release. Such information shall be understood to be restricted to that recorded as the result of the initiation of criminal proceedings or of any consequent proceedings related thereto. It shall be understood not to include intelligence, analytical and investigative reports and files, nor statistical records and reports in which individuals are not identified and from which their identities are not ascertainable.

3. The "Committee" and "Department" shall respectively be understood to mean the Security and Privacy Committee and the Louisiana Department of Justice.

4. The term "purge" shall be understood to encompass both "close" and "expunge".

5. The term "close" shall be understood to mean the retention of files, records or information subject to such restrictions upon access to and dissemination of such files, records or information as are required by these regulations.

6. The term "expunge" shall be understood to mean the physical destruction of files, records or information.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved: _____
Honorable William J. Guste, Jr.
Attorney General

Louisiana Department of Justice
Room 502, 1885 Wooddale Blvd.
Baton Rouge, La. 70806
July 1, 1974

THE CONTENT OF CRIMINAL OFFENDER RECORD INFORMATION

PURPOSE: This regulation defines the content of the criminal offender record information and the procedure by which the record can be challenged for accuracy or completeness.

1. The Content of Criminal Offender Record Information. Criminal offender record information shall be understood to be confined to that generally contained in "rap sheets". That is to say, such information shall be confined to a recording of personal identifying facts and of the results of an arrested individual's movement through the various formal stages of the criminal justice process, from arrest through trial, if any, disposition and release. Intelligence data and informal or subjective comments regarding an individual's behavior or attitudes shall not be understood to be criminal offender record information. The following rules apply to computerized criminal offender record information:

a. Individual record information entered in a person's file shall be relevant to the purpose for which the file was created.

b. Misdemeanor, drunk and traffic records where the case did not result in imprisonment or probation supervision shall not be entered in computerized criminal offender files.

c. Misdemeanor arrests not leading to conviction shall be subject to expungement in accordance with existing law.

d. Information that arrest took place or prosecution was initiated shall not be entered in a computerized criminal offender file without subsequent entry of a final law enforcement or judicial disposition.

e. Individual record information which is anecdotal, evaluative, or judgmental shall not be computerized; provided that where an agency's responsibilities require behaviorial analysis of individuals, that agency may automate standardized personal evaluation data entries of a type useful for research classification.

f. Each criminal justice agency maintaining records in an "in-process" criminal offender file must ensure that the most current record is used or obtained. Entries which are not current or accurate should be eliminated from the system.

2. Challenges to the Accuracy or Completeness of Automated Criminal Offender Record Information.

a. Any person who believes that automated criminal offender

record information which refers to him is inaccurate, incomplete, or misleading may request the originating criminal justice agency in this state to purge, modify, or supplement that information. See section 3 (f) of Regulation 1-06. Should the agency decline so to act, or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual may request review by the Committee.

b. Such requests to the Committee shall be made in writing. Each request shall include a concise statement of the alleged deficiencies of the criminal offender record information, shall state the date and result of any review by the criminal justice agency, and shall append a sworn verification of the facts alleged in the request signed by the individual or his attorney.

c. Upon receipt of each such request, the Committee shall ask any criminal justice agency which has previously reviewed the criminal offender record information to provide the Committee a written summary of the review and of its findings.

d. A hearing officer, selected by the Committee from among its members or staff, shall, upon the basis of the request and/or the summary and any other statements or documents provided by the individual or by the criminal justice agency, determine whether there is prima facie evidence that the criminal offender record information is inaccurate, misleading, or incomplete. Should the hearing officer find that there is no such evidence, the individual may seek review by the Committee. See subsection (g). Should the hearing officer find that there is such evidence, the Committee shall empanel a review tribunal from among its members and staff. The tribunal shall consist of not less than three members, a majority of which shall be members of the Committee. The individual and each criminal justice agency with custody or control of the information in question may challenge for cause any members of the tribunal or hearing officer. Each such challenge shall be decided by majority vote of the full Committee.

e. The tribunal may require the individual or any criminal justice agency within the state to file written statements, arguments or documentary materials. It may impose such time requirements for these purposes as it deems appropriate. Unless the individual waives in writing his right to a hearing, the tribunal shall conduct a public hearing at which the individual may appear with counsel, may present evidence, and may examine and cross-examine witnesses. The rules of evidence and procedure in use by the courts of this state for civil proceedings at the time of the hearing shall, except insofar as the Committee may otherwise decide, be applied by the tribunal.

f. The tribunal shall issue written findings and conclusions, in which any relief to which it believes the individual is entitled shall be fully and specifically described. The tribunal

may with respect to cases which it believes to be either unusually difficult or of general importance, certify the request to the full Committee for review. Findings and conclusions, as well as such certifications, shall be adopted by majority vote of the tribunal.

g. Should the individual or any criminal justice agency with custody or control of the information in question believe the findings or conclusions of a hearing officer or tribunal to be unsatisfactory, the individual or agency may petition the full Committee for review. Each such petition, and each certification from a tribunal under the terms of subsection (f), shall be voted upon by the Committee, and review shall be granted whenever three or more members of the Committee vote that it should be granted. The Committee may, when it grants review, permit oral argument and the presentation of other evidence. Where review is granted of the findings of a hearing officer, the Committee may empanel a review tribunal and submit the request for decision by that tribunal. Where the Committee conducts a review, it shall issue written findings and conclusions.

h. The final disposition of each request, whether upon the basis of the findings and conclusions of a hearing officer, a tribunal, or the Committee shall be by order of the Committee.

i. Where the final disposition of a request includes an order that criminal offender record information be purged, modified, or supplemented, that order shall be promptly communicated by the Committee to the Department. The Department shall in each such case promptly transmit the terms of the order to all criminal justice agencies within the state, to the individual involved, and to all other individuals or agencies, whether or not located within this state, to which the criminal offender record information in question has previously been communicated. The individuals and agencies to which such information has previously been communicated shall be determined by examination of the listings required to be maintained by Regulation 1-07.

j. Records challenged under the provisions of these regulations shall be deemed to be accurate, complete and valid until otherwise ordered by the Committee.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved: _____
Honorable William J. Guste, Jr.
Attorney General

Louisiana Department of Justice
Room 502, 1885 Wooddale Blvd.
Baton Rouge, La. 70806
July 1, 1974

ELIGIBILITY FOR ACCESS TO COMPUTERIZED CRIMINAL OFFENDER RECORD INFORMATION

PURPOSE: This regulation defines who has access to computerized criminal offender record information and the procedures taken to protect these records from illegal use. This regulation allows criminal justice agencies, authorized researchers, and individuals in the system the right to have access to the record(s). In order to protect these records from illegal use, persons having access to the records must sign a non-disclosure agreement. Action taken for violation of this privileged information is defined in the administrative penalties.

1. Criminal Justice Agencies

Criminal justice agencies shall be permitted to have access to computerized criminal justice information systems where they have both a need and a right to know. Non-criminal justice agencies authorized by statute to receive criminal justice information shall be supplied with such information only through criminal justice agencies.

Criminal offender record information may be disseminated to federal agencies and the agencies of other states and jurisdictions only if they are criminal justice agencies within the meaning of these regulations.

Unless certified as a qualified criminal justice agency by the Department, each agency in this state that wishes access to criminal offender record information shall in writing request the Department to make a finding of its eligibility for such access. The Department shall promptly make and issue written findings as to each such agency's eligibility or non-eligibility for such access. Upon request by the agency or any other interested party, or upon the Department's own motion, the Department may conduct public hearings at which it may receive evidence and hear statements and arguments from any interested parties.

2. Research Use of Criminal Offender Record Information

a. Research Design and Access to Information: Researchers who wish to use criminal justice information shall first submit to the Security and Privacy Committee a completed research design that guarantees adequate protection of security and privacy. Authorization to use criminal justice information shall only be given when the Committee has approved the research design.

The Committee shall recommend to a criminal justice agency that a particular research program should be permitted access to criminal offender record information only if it finds that any threats to individual privacy created by the program:

(1) Have been minimized by methods and procedures reasonably calculated to prevent injury or embarrassment to individuals and;

(2) are clearly outweighed by the advantages for the criminal justice system that may reasonably be expected to result if the program is permitted.

The decision of the Committee to permit or not to permit any program of research shall not be binding upon any other criminal justice agency.

b. Limits on Criminal Justice Research. Research shall preserve the anonymity of all subjects.

The following requirements shall be applicable to all such programs of research, and each criminal justice agency and researcher shall be responsible for their full and prompt implementation.

(1) In no case shall criminal offender record information furnished for purposes of any program of research be used to the detriment of the persons to whom such information relates.

(2) In no case shall criminal offender record information furnished for purposes of any program of research be used for any other purpose; nor shall such information be used for any program of research other than that authorized and approved by the Committee.

(3) Each participant and employee of every program of research authorized access to criminal offender record information shall, prior to having such access, fully and completely execute a non-disclosure agreement approved by the Committee.

(4) In every case the authorization for access to criminal offender record information shall assure the criminal justice agency and the Committee full and complete rights to monitor the program of research to assure compliance with this regulation. Such monitoring rights shall include the right of the Committee to audit and review such monitoring activities and also to pursue its own monitoring activities.

(5) Each such program of research shall preserve the right of the Committee and the criminal justice agency involved to examine and verify the data generated as the result of the program, and, if a material error or omission is found to have occurred, to order that the data not be released for any purpose unless corrected to the satisfaction of the agency or Committee.

c. Duties and Responsibilities of the Holding Agency. Each criminal justice agency shall formulate methods and procedures to assure compliance with the requirements of this regulation with respect to the use of criminal offender record information for purposes of any program of behavioral or other research, whether such programs are conducted by a criminal justice agency or by any other agency or person. Each criminal justice agency releasing criminal offender information for research purposes shall maintain a listing of the agencies or individuals to which such information is released. Such listings shall be subject to the requirements prescribed in Regulation 1-07. The Committee may require any modifications or additions to these methods and procedures that it finds necessary for full and prompt compliance with this regulation.

3. Individual's Right to Review Automated Criminal Offender Record Information

Each individual shall have the right to review automated criminal offender record information relating to him. Each criminal justice agency in this state with custody or control of criminal offender record information shall make available facilities and personnel necessary to permit such reviews. Such reviews shall be conducted in accordance with the following procedures:

a. Such reviews shall occur only within the facilities of a criminal justice agency and only under the supervision and in the presence of a designated employee or agent of a criminal justice agency. The files and records made available to the individual shall not be removed from the premises of the criminal justice agency.

b. Such reviews may, at the discretion of each criminal justice agency, be limited to ordinary daylight business hours.

c. Such reviews shall be permitted only after proper verification that the requesting individual is the subject of the criminal offender record information which he seeks to review. Each criminal justice agency shall require fingerprinting for this purpose. Upon presentation of a sworn

authorization from the individual involved, together with proof of identity, an individual's attorney may be permitted to examine the criminal offender record information relating to the individual.

d. A record of each such review shall be maintained by each criminal justice agency by the completion and preservation of LCJIS Form No. 1. (See Appendix A) Each such form shall be completed and signed by the supervisory employee or agent present at the review. The reviewing individual shall be asked, but may not be required, to verify by his signature the criminal offender record information he has reviewed. The form shall include a recording of the name of the reviewing individual, the date of the review, and whether or not any exception was taken to the accuracy, completeness or contents of the information reviewed.

e. The reviewing individual may make a written summary or notes in his own handwriting of the information reviewed, and may take with him such copies. Such individuals may not, however, take any such copy that might reasonably be confused with the original. Criminal justice agencies are not required to provide equipment for copying.

f. Each reviewing individual shall be informed of his rights of challenge under this regulation. Each such individual shall be informed that he may submit written exceptions as to the information's contents, completeness or accuracy to the criminal justice agency with custody or control of the information. Should the individual elect to submit such exceptions, he shall be furnished LCJIS Form No. 2 (See Appendix B). The individual shall record any such exceptions on the form. The form shall include an affirmance, signed by the individual or his legal representative, that the exceptions are made in good faith and to the best of the individual's knowledge are believed true. One copy of the form shall be forwarded to the review officer of the criminal justice agency in question. An officer shall be designated for that purpose in each criminal justice agency. A second copy of the form shall be forwarded to the Department. The criminal justice agency shall in each case cause to be conducted an audit of the individual's criminal offender record information appropriate to determine the accuracy of the exceptions. The Department and the individual shall be informed in writing of the results of the audit. LCJIS Form No. 3 (See Appendix C) may be used for this purpose. Should the audit disclose inaccuracies or omissions in the information, the criminal justice agency shall cause appropriate alterations or additions to be made to the information and shall cause notice of such alterations or additions to be given to the Department, the individual involved, and any other agencies in this or any other jurisdiction to which that criminal offender record information has previously been disseminated.

4. No Other Access to Criminal Offender Record Information Shall be Permitted Except as Required by Valid State Statutes

5. Non-disclosure Agreement
No agency qualified under these regulations to obtain computerized criminal justice information may obtain access until it has signed a non-disclosure agreement, as adopted by the Security and Privacy Committee.

6. Administrative Penalties:

a. Any violation of the provisions of these regulations committed by any employee or officer of any public agency of this state, in addition to any applicable criminal or civil penalties, shall be punished by suspension, discharge, reduction in grade, transfer or such other administrative penalties as are deemed by the criminal justice agency to be appropriate. Provided, however, that such penalties shall be imposed only if they are permissable under any applicable statutes governing the terms of employment of the employee or officer in question.

b. Where any public agency of this state is found by the Department willfully or repeatedly to have violated the requirements of these regulations, the Department may where other statutory provisions permit, prohibit the dissemination of criminal offender record information to that agency, for such periods and on such conditions as the Department deems appropriate.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved:

Honorable William J. Guste, Jr.
Attorney General

Louisiana Department of Justice
Room 502, 1885 Wooddale Blvd.
Baton Rouge, La. 70806
July 1, 1974

LISTING OF AGENCIES TO WHICH CRIMINAL OFFENDER RECORD INFORMATION HAS BEEN DISSEMINATED

PURPOSE: This regulation defines the procedure for listing of agencies to which criminal offender record information has been disseminated.

Listing of Agencies to Which Criminal Offender Record Information Has Been Disseminated

Each criminal justice agency in this state shall maintain a listing of the agencies or individuals, both in and outside this state, to which it released criminal offender record information. Each such listing is to be preserved for a period of not less than one year from the date of the release to which it relates. Such listings may be maintained in whatever form criminal justice agencies may elect, but each such listing shall indicate the agency or individual to which information was released, the date of the release, the individual to whom the information relates, and the items of information released. Such listings shall be made available for audit or inspection by the Department, the Committee, or their staff members at such times as the Department or Committee may require.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved: _____
Honorable William J. Guste, Jr.
Attorney General

Louisiana Department of Justice
Room 502, 1885 Wooddale Blvd.
Baton Rouge, La. 70806
July 1, 1974

SEGREGATION OF COMPUTERIZED FILES AND THEIR LINKAGE TO INTELLIGENCE FILES

PURPOSE: This regulation defines the type of computer recommended for use in the storage of criminal offender record information and the linkage of these records to intelligence files.

1. Segregation of Computerized Files
All criminal offender record information should be stored in a computer dedicated solely to criminal justice users. However, where this is not immediately possible, efforts should continue towards the goal of a dedicated computer. Where existing limitations temporarily prevent the use of a solely dedicated computer, the data files and programs used by the criminal justice system shall be under the management control of a criminal justice agency and shall be dedicated in the following manner:

a. Files shall be stored on the computer in such a manner that they cannot be modified, destroyed, accessed, changed, or overlaid in any fashion by non-criminal justice terminals.

b. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a program that will prohibit inquiry, file updates or destruction from any terminal other than criminal justice system terminals which are so designated. The destruction of files shall be limited to specifically designated terminals under the management control of the criminal justice agency responsible for maintaining the files.

c. The agency employee in charge of computer operations shall write and install, or cause to have written and installed, a classified program to detect and store for classified output all attempts to penetrate any criminal offender record information system, program or file. This program shall be known only to the agency control employee and his immediate assistant and the records of such program shall be kept continuously under maximum security conditions. No other persons, including staff and repair personnel, shall be permitted to know this program.

d. Non-terminal access to criminal offender record information such as requests for tapes, file dumps, printouts, etc., shall be permitted only with approval of the criminal justice agency having management control of the data. The employee in charge of computer operations shall forward all such requests to the criminal justice agency employee responsible for maintaining systems and data security.

2. Linkage to Intelligence Files:

a. Criminal offender record files may be linked to intelligence files in such a manner that an intelligence inquiry from a criminal justice terminal can trigger a printout of the subject's criminal offender record information.

b. A criminal offender record inquiry response shall not include information which indicates that an intelligence file exists.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved: _____
Honorable William J. Guste, Jr.
Attorney General

Louisiana Department of Justice
Room 502, 1885 Wooddale Blvd.
Baton Rouge, Louisiana 70806
July 1, 1974

PROGRAMMING SECURITY

PURPOSE: This regulation defines the procedures for programming security in order to assure the continued security of criminal offender record information under their control. These procedures will include, but not be limited to the following: terminal and operator identification, data storage, data entry, and file protection software.

1. Terminal and Operator Identification:

a. There shall be a terminal identification code number for each remote terminal as a precondition for entering the files (normally done by software).

b. Within each agency, terminal use shall be assigned to a limited and identified group of individuals.

c. Each individual terminal user shall identify himself by a personal identification number or authorization code.

d. The computer shall be programmed to log the identity of all users, the files accessed, and the date of access. This information shall be maintained for twelve (12) months.

e. Each remote terminal user shall establish a written log of terminal use, which shall be audited periodically.

2. Data Storage

a. Where a computer file may be accessed by more than one agency, system software shall ensure that each agency shall obtain only the data to which it is entitled.

b. System hardware and software shall contain controls to ensure that each user with on-line direct terminal access can obtain only reports authorized for its use.

c. System software shall be implemented to erase and clear core, buffers, mass storage, and peripheral equipment of data automatically whenever purging is required by these regulations.

d. Duplicate computer files shall be created as a countermeasure for destruction of original files and all computer tapes or discs shall be locked in a safe storage area under the control of senior personnel. Secondary storage should be used for back-up.

3. Data Entry:

a. Where criminal justice data is transmitted to a data center on reporting forms, the center shall establish procedures for destroying these forms after the data is entered in the computer.

b. System software shall contain controls to ensure that each terminal is limited to the information it can input, modify, or cancel.

4. File Protection Software:

a. A monitor program shall be developed to report attempts to violate the system security software.

b. Edit programs shall be created to periodically audit record alteration transactions.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved:

Honorable William J. Guste, Jr.
Attorney General

Louisiana Department of Justice
Room 502, 1885 Woodlale Blvd.
Baton Rouge, La. 70806
July 1, 1974

PHYSICAL SECURITY

PURPOSE: This regulation defines physical security in terms of protection from accidental loss and intentional damage to the system.

1. Protection from Accidental Loss

Information system managers shall institute procedures for protection of information from environmental hazards including fire, flood, and power failure. Appropriate elements should include adequate fire detection and quenching systems, water-tight facilities, protection against water and smoke damage, liaison with local fire and public safety officials, fire resistant materials on walls and floors, air conditioning systems, emergency power sources, and backup files.

2. Intentional Damage to System

Agencies administering criminal justice information systems shall adopt security procedures which limit access to information files. These procedures should include use of guards, keys, badges, passwords, access restrictions, sign-in logs, or like controls. All facilities which house criminal justice information files shall be so designed and constructed as to reduce the possibility of physical damage to the information. Appropriate steps in this regard include: physical limitations on access, security storage for information media, heavy duty non-exposed walls, perimeter barriers, adequate lighting, detection and warning devices and closed circuit television.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved: _____
Honorable William J. Guste, Jr.
Attorney General

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Room 502, 1885 Wooddale Blvd.
Baton Rouge, La. 70806
July 1, 1974

PERSONNEL SECURITY

PURPOSE: This regulation defines the procedure by which personnel security is achieved and maintained. The procedure includes employment screening, clearance, annual review/security manual and in-service training, and system discipline.

1. Employment Screening

Applicants for employment and those presently employed in criminal justice information systems shall be expected to consent to an investigation of their character, habits, previous employment, and other matters necessary to establish their good moral character, reputation, and honesty. Giving false information should disqualify an applicant from employment and subject a present employee to dismissal.

Investigation should be designed to develop sufficient information to enable the appropriate officials to determine employability and fitness of persons entering sensitive positions. Investigations of applicants should be conducted on a pre-employment basis and the resulting reports used as a personnel selection device.

2. Clearance, Annual Review/Security Manual and In-Service Training

System personnel including terminal operators in remote locations, as well as programmers, computer operators, and others working at or near the central processor, shall be assigned appropriate security clearances and should have those clearances renewed periodically after investigation and review.

Each criminal justice information system shall prepare a security manual listing the rules and regulations applicable to maintenance of system security. Each person working with or having access to criminal justice information files should know the contents of the manual. To this end, each employee should receive not less than four (4) hours of training each year concerning system security.

3. System Discipline

The management of each criminal justice information system should establish sanctions for accidental or intentional violation of system security standards. Supervisory personnel should be delegated adequate authority and responsibility to enforce the system's security standards.

Any violation of the provisions of these standards by any employee or officer of any public agency, in addition to any applicable criminal or civil penalties, shall be punished by suspension, discharge, reduction in grade, transfer or such other administrative penalties as are deemed by the criminal justice agency to be appropriate; provided, however, that such penalties shall be imposed only if they are permissible under any applicable statutes governing the terms of employment of the employee or officer in question.

Where any public agency is found by the Committee willfully or repeatedly to have violated the requirements of the standard, the Committee may, where other statutory provisions permit, prohibit the dissemination of criminal offender record information to that agency, for such periods and on such conditions as the Committee deems appropriate.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved:

Honorable William J. Guste, Jr.
Attorney General

Louisiana Department of Justice
Room 502, 1885 Wooddale Blvd.
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July 1, 1974

TRAINING OF SYSTEM PERSONNEL

PURPOSE: This regulation defines the length of time and the type of training all persons involved in the direct operation of a criminal offender record information system shall receive.

Training of System Personnel

All persons involved in the direct operation of a criminal offender record information system shall receive a total of not less than four (4) hours, and all immediate supervisors of such persons shall receive a total of not less than six (6) hours of approved instruction concerning the proper use and control of criminal offender record information and related systems. Instruction may be offered by any agency or facility, provided that the course of instruction, materials, and qualifications of instructors have been reviewed and approved by the Department. Each such operator or supervisor shall begin to attend such a course of instruction within a reasonable period of time after assignment to the criminal offender record information system.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved: _____
Honorable William J. Guste, Jr.
Attorney General

Louisiana Department of Justice
Room 502, 1885 Wooddale Blvd.
Baton Rouge, La. 70806
July 1, 1974

PUBLIC EDUCATION

PURPOSE: This regulation defines a function of the Attorney General which is to conduct an appropriate program of public education concerning the purposes, proper use and control of criminal offender record information.

Public Education

The Attorney General shall conduct an appropriate program of public education concerning the purposes, proper use and control of criminal offender record information. He may make available upon request facilities, materials, and personnel for the purpose of educating the public about the purposes, proper use and control of criminal offender record information.

This regulation has been reviewed and approved by the LCJIS Privacy and Security Committee and the LCJIS Policy Board.

Approved: _____
Honorable William J. Guste, Jr.
Attorney General

CHAPTER 13

PUBLIC RECORDS AND PROCEEDINGS

§ 401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

1975, c. 758.

Derivation:
1959, c. 219.
1975, c. 483, § 1.
Former § 401 of this Title.

§ 402. Definitions

3. **Public records.** The term "public records" shall mean any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute;

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;

C. Records, working papers and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the biennium in which the proposal or report is prepared; and

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of baragining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives.

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy and the University of Maine. The provisions of this paragraph do not apply to the boards of trustees, the committees and subcommittees of those boards, and the administrative council of the University of Maine, which are referred to in section 402, subsection 2, paragraph B.

1975, c. 758; 1977, c. 164, §§ 1, 2.

Amendments:
—1977. Subsection 2, B: Chapter 164, § 1 inserted "any of its committees and subcommittees, the administrative council of the University of Maine," and "and any of its committees and subcommittees".

Subsection 3, E: Chapter 164, § 2 deleted "subcommittees of the University of Maine Board of Trustees, Board of Trustees of the Maine Maritime Academy or" after "prepared for" substituted "both institutions" for "the Maine Maritime Academy and the University of Maine" in the 1st sentence and added the 2nd sentence.

Derivation:
1959, c. 219.
1973, c. 433, § 1.
1975, c. 243.
1975, c. 483, §§ 2, 3.
1975, c. 623, § 1.
Former §§ 402, 402-A of this Title.

§ 408. Public records available for public inspection

Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record; provided that, whenever inspection cannot be accomplished without translation of mechanical or electronic data compilations into some other form, the person desiring inspection may be required to pay the State in advance the cost of translation and both translation and inspection may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the record sought and provided further that the cost of copying any public record to comply with this section shall be paid by the person requesting the copy.

1975, c. 758.

Derivation:
1959, c. 219.
Former § 405 of this Title.

§ 409. Appeals

1. Records. If any body or agency or official, who has custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 10 days of the request for inspection by any person. Any person aggrieved by denial may appeal therefrom, within 10 days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action shall be illegal and the officials responsible shall be subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

3. Proceedings not exclusive. The proceedings authorized by this section shall not be exclusive of any other civil remedy provided by law.

1975, c. 758.

Derivation:
1975, c. 483, § 5.
Former §§ 405-B, 405-C of this Title.

§ 410. Violations

A willful violation of any requirement of this subchapter is a Class E crime.

1975, c. 758.

Derivation:
1959, c. 219.
1975, c. 483, § 6.
Former § 406 of this Title.

§ 2161-A. Expungement of records

Any person convicted of a violation of any law of the State of Maine and who later appealed to and was granted a full pardon by the Governor and Executive Council, shall be entitled to expungement of any records or recordings of such conviction.

The granting of a full pardon shall mean that the person shall, for all purposes, be considered as never having been arrested or convicted for the offense for which such pardon is granted. No person, firm, corporation or employer shall use information concerning an offense for which a pardon has been granted in any manner to the detriment of the person pardoned.

1. **Effect.** The effect of expungement of criminal records of pardoned persons as outlined in this section shall be the following:

A. **Distribution.** To prohibit the distribution or dissemination of any record so expunged;

B. **Civil rights.** To restore to such persons all civil rights or privileges lost or forfeited as a result of any conviction, the records with respect to which have been expunged;

C. **Use.** To prohibit the use of any such record for purposes of impeaching the testimony of any person with respect to whom such order was issued in any civil or other action;

D. **Inquiry.** To prohibit the use, dissemination or distribution of any such record so expunged in connection with an inquiry related to credit purchases or access to educational programs.

2. **Responsibility to inform.** It is the responsibility of the Secretary of State to notify all law enforcement agencies, regulatory or licensing agencies, correctional institutions, courts and any other offices or officers known to have been involved in the original arrest and conviction or to have a record thereof, of the requirement to expunge such records following the granting of a full pardon. Any person granted a full pardon shall present, within 5 days of the effective date of the pardon, to the Secretary of State a list of all persons, offices, agencies and other entities which such person has reason to believe have records of the arrest or conviction for which pardoned, under their jurisdiction or control and the Secretary of State shall inform said parties of the full pardon being granted and the requirement to expunge their records, and shall inform all parties notified of the penalty provisions of this section.

3. **Penalty.** It shall be unlawful for any officer or employee of any agency, department, court or other entity who, after receiving notice that a full pardon has been granted, to release, otherwise disseminate or make available for any purpose involving employment, bonding or licensing in connection with any business, trade or profession, or for the purposes of credit applications or application to any educational program, to any individual, corporation, firm, partnership, institution or entity, or to any department, agency or other instrumentality of the State Government, or any political subdivision thereof, any information or other data concerning any arrest, indictment, trial, hearing, conviction or correctional supervision, the records with respect to which were required to be expunged by this section. Any person who shall willfully violate a provision of this section shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months, or by both.

1973, c. 691.

SUBCHAPTER VII

CRIMINAL HISTORY RECORD INFORMATION

§ 601. Definitions

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Administration of criminal justice.** "Administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. **Criminal history record information.** "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, complaints, indictments, informations and any disposition arising therefrom, sentencing, correctional supervision and release. The term does not include identification information such as fingerprints, palm prints or photograph records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.

3. **Criminal justice agency.** "Criminal justice agency" means those agencies at all levels of Federal or State Government which perform as their principal function, activities relating to crime prevention, including research or the sponsorship of research; the apprehension, prosecution, adjudication, incarceration or rehabilitation of criminal offenders or the collection, storage, dissemination or usage of criminal history record information.

4. **Dissemination.** "Dissemination" means use of and access to information and the transmission of information, whether orally, in writing or by electronic means.

5. **Executive order.** "Executive order" means an order of the President of the United States or the Governor of this State which has the force of law and which is published in a manner permitting regular public access thereto.

6. **Person.** "Person" means a human being or a corporation, partnership or unincorporated association.

1975, c. 763, § 3.

Amendments:
—1975. Subchapter new.

§ 602. Applicability

1. **Criminal justice agencies.** This subchapter shall apply only to criminal justice agencies.

2. **Exceptions.** This subchapter shall not apply to criminal history record information contained in:

A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

B. Police blotters;

C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;

D. Written decisions of a court resulting from a public judicial proceeding;

E. Records of traffic offenses including traffic infractions, maintained by the Secretary of State, except for violations of Title 29, sections 893 and 1312 and except for those violations resulting in revocation of license pursuant to Title 29, section 1313; and

F. Petitions for and warrants of full and free pardons, conditional pardons, communications, reprieves and amnesties.

3. **Permissible disclosure.** Nothing in this subchapter shall be construed to prevent a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release or prosecution of an individual, the adjudication of charges or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates; nor is a criminal justice agency prohibited from confirming prior criminal history record information to members of the news media or any other person, when in response to a specific inquiry as to whether on a specified date a named person was arrested or had a complaint, information or indictment returned against him or had disposition on a charging document, provided that the information disclosed is based on data excluded by subsection 2, and further provided that such disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its custody or control which indicates the final disposition of the arrest, detention, information, indictment or other charging document.

1975, c. 763, § 3.

Amendments:
—1975. Chapter 763 enacted this section.

§ 603. Nondisclosure of certain records

Except as provided in section 602, subsections 2 and 3, dissemination of criminal history record information, whether directly or through any intermediary, which relates directly to information respecting:

1. **Acquittal.** A crime for which a person has been acquitted in any court, but excluding acquittals by reason of mental disease or defect;

2. **Pardon.** A crime for which a person has been convicted in any court but for which a full and free pardon has been granted; and

3. **Dismissal of complaint, indictment or information.** A crime for which a person has been charged by complaint, indictment or information which subsequently has been dismissed in any court and which has not been reinitiated by a new or replacement complaint, indictment or information and the dismissal took place under circumstances precluding the State from reinitiating such criminal charge; shall be limited to:

A. Criminal justice agencies, for purposes of the administration of criminal justice, except that such dissemination is not authorized for both subsection 1 and subsection 2, where the Governor when granting a full and free pardon expressly provides that the criminal history record information relating to a crime for which that pardon has been granted shall not be made available to criminal justice agencies for purposes of administration of criminal justice;

B. Persons and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure security and confidentiality of the data and provide sanctions for violations thereof;

C. Persons and agencies for the express purpose of research, evaluation or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the

security and confidentiality of the data and provide sanctions for violations thereof;

D. Persons and agencies where authorized by court order or court rule; and

E. Such other state agencies which are by statute or executive order expressly allowed access to such criminal history record information in order to carry out their lawful duties.

1975, c. 763, § 3.

Amendments:
—1975. Chapter 763 enacted this section.

§ 604. Limitations on dissemination

1. Dissemination to agencies. Except as provided in section 602, subsections 2 and 3, and in section 603, dissemination of criminal history record information, whether directly or through any intermediary, shall be limited to:

A. Criminal justice agencies, for purposes of the administration of criminal justice;

B. Criminal justice agencies, for purposes of criminal justice agency employment;

C. Such other state agencies which require criminal history record information to implement a statute or executive order that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct; provided, that only information relating to the expressly referred to criminal conduct may be disseminated;

D. Persons and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure security and confidentiality of the data and provide sanctions for violations thereof;

E. Persons and agencies for the express purpose of research, evaluative or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluative or statistical purposes, insure the security and confidentiality of the data and provide sanctions for violations thereof;

F. Agencies of State and Federal Government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information. Criminal justice agencies shall by rules or regulations approved by the Attorney General prescribe such reasonable procedures as are necessary to confirm the existence of such agency's statutory or executive order authorization and the identity and authority of the person requesting any criminal history record information in order to insure the security and confidentiality of such information; and

G. Persons and agencies when authorized by court order or court rule.

2. Dissemination to noncriminal justice agencies. Use of criminal history record information disseminated to noncriminal justice agencies as authorized by this section shall be limited to the purposes for which it was given and shall not be disseminated further.

1975, c. 763, § 3.

Amendments:
—1975. Chapter 763 enacted this section.

§ 605. Unlawful dissemination

1. Offense. A person is guilty of unlawful dissemination if he intentionally or knowingly disseminates criminal history record information in violation of any of the provisions of this subchapter.

2. Classification. Unlawful dissemination is a Class E crime.

1975, c. 763, § 3.

Amendments:
—1975. Chapter 763 enacted this section.

§ 606. Right to access and review

1. Inspection. Any person or his attorney shall have the right to inspect the criminal history record information concerning him maintained by a criminal justice agency, provided that a person's right to inspect or review criminal history record information pertaining to himself shall not extend to data contained in intelligence, investigatory or other related files and shall not be construed to include any other information than that included within the definition of "criminal history record information." Criminal justice agencies may prescribe reasonable hours during which such right may be exercised, the location at which such right may be exercised and such additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary, both to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect such information. Such agencies shall supply to the person or his attorney a copy of the criminal history record information pertaining to him upon request and payment of a reasonable fee.

2. Review. A person or his attorney may request amendment or correction of criminal justice record information concerning him by addressing, either in person or by mail, his request to the criminal justice agency in which the information is maintained. The request must indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction.

Upon receipt of such request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If such investigation reveals that the questioned information is inaccurate or incomplete, the agency shall forthwith correct the error or deficiency and advise the requesting person that such correction or amendment has been made.

If the agency refuses to make the requested amendment or correction, it shall advise the requesting person of the refusal and the reasons therefor. If an agency refuses to make a requested amendment or correction, or if the requesting person believes the agency's decision to be otherwise unsatisfactory, the person may seek relief in the Superior Court.

3. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall within 30 days thereof advise all prior recipients of such information of the amendment or correction and shall notify the person of compliance with that requirement and the prior recipients notified.

4. Right of release. The provisions of this subchapter shall in no way be construed to limit the right of a person to disseminate, to any person or agency, criminal history record information pertaining to himself.

1975, c. 763, § 3.

Amendments:
—1975. Chapter 763 enacted this section.

§ 607. Application

The provisions of this subchapter shall apply to those criminal records made before the effective date of this Act, including those which have been previously expunged under any other provision of state law.

1975, c. 763, § 3.

Amendments:
—1975. Chapter 763 enacted this section.

CHAPTER 193

STATE BUREAU OF IDENTIFICATION

§ 1541. Commanding officer

1. Appointment. The Chief of the State Police shall appoint a person who has knowledge of the various standard identification systems and Maine court procedure to be commanding officer of the State Bureau of Identification, heretofore established within the Bureau of State Police.

2. Personnel. The Chief of the State Police may delegate members of the State Police to serve in the bureau upon request of the commanding officer. The commanding officer shall have the authority to hire such civilian personnel, subject to the Personnel Law and the approval of the Chief of the State Police, as he may deem necessary.

3. Cooperation with other bureaus. The commanding officer shall cooperate with similar bureaus in other states and with the national bureau in the Department of Justice in Washington, D. C. and he shall develop and carry on an interstate, national and international system of identification.

4. Rules and regulations. The commanding officer shall make and forward to all persons charged with any duty or responsibility under this section and sections 1542, 1544, 1547 and 1549; rules, regulations and forms for the taking, filing, preserving and distributing of fingerprints and other criminal history record information as provided in this chapter. Before becoming effective, such rules, regulations and forms are to be approved by the Attorney General.

5. Apparatus and materials. The Chief of the State Police shall supply such bureau with the necessary apparatus and materials for collecting, filing, preserving and distributing criminal history record information.

1975, c. 763, § 4.

§ 1542. Recording of fingerprints; photographs; palm prints

1. Fingerprints. Law enforcement officers or persons in charge of state correctional institutions under the general supervision, management and control of the Department of Mental Health and Corrections shall have the authority to take or cause to be taken, and shall take or cause to be taken, the fingerprints of any person:

A. In custody charged with the commission of a crime;

B. In custody charged with the commission of a juvenile offense;

C. In custody and believed to be a fugitive from justice;

D. Named in a search warrant which directs that such person's fingerprints, palm prints or photograph be taken;

E. Who dies while confined at a jail, police station or any facility operated by the Bureau of Corrections;

F. Who may have died by violence or by the action of chemical, thermal or electrical agents, or following abortion, or suddenly when not disabled by recognizable disease, or whose death is unexplained or unattended, if directed to do so by the Attorney General or District Attorney; or

G. The taking of whose fingerprints, palm prints or photograph has been ordered by a court.

2. Photographs. Whenever a law enforcement officer or other individual is authorized, pursuant to subsection 1, paragraphs A, B, C, E or F, to take or cause to be taken the fingerprints of a person, the officer or other individual may take or cause to be taken the photograph or palm prints, or photograph and palm prints, of such person.

3. Fingerprint record forms. Fingerprints taken pursuant to subsection 1, paragraphs A, B, C, D and E shall be taken on a form furnished by the State Bureau of Identification, such form to be known as the Criminal Fingerprint Record. Fingerprints taken pursuant to subsection 1, paragraph F, shall be taken on a form furnished by the bureau, such form to be known as the Noncriminal Fingerprint Record. Fingerprints taken pursuant to subsection 1, paragraph G, shall be taken upon either the Criminal Fingerprint Record or the Noncriminal Fingerprint Record as the court shall order.

4. Duty to submit. It shall be the duty of the head of the arresting agency, or his designee, to transmit, within 5 days of the date of arrest, to the State Bureau of Identification the criminal fingerprint record of any person whose fingerprints are taken pursuant to subsection 1, paragraphs A, B or C. Law enforcement agencies other than the arresting agency shall not submit to the State Bureau of Identification a criminal fingerprint record for any person whose fingerprints are taken pursuant to subsection 1, paragraphs A, B or C, unless expressly requested to do so by the Commanding Officer of the State Bureau of Identification.

It shall be the duty of the Director of the Bureau of Corrections, or his designee, to transmit, within 5 days of the date of death, to the State Bureau

of Identification, the criminal fingerprint record of any deceased person whose fingerprints are taken pursuant to subsection 1, paragraph E.

5. Law enforcement officer. As used in this section, "law enforcement officer" means any person who by virtue of his public employment is vested by law with a duty to prosecute offenders or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

1975, c. 763, § 5.

§ 1544. Uniform crime reporting

It shall be the duty of all state, county and municipal law enforcement agencies, including those employees of the University of Maine appointed to act as policemen, to submit to the State Bureau of Identification uniform crime reports, to include such information as is necessary to establish a Criminal Justice Information System and to enable the commanding officer to comply with section 1541, subsection 3. It shall be the duty of the bureau to prescribe the form, general content, time and manner of submission of such uniform crime reports. The bureau shall correlate the reports submitted to it and shall compile and submit to the Governor and Legislature annual reports based on such reports. A copy of such annual reports shall be furnished to all law enforcement agencies.

1975, c. 763, § 7.

§ 1547. Courts to submit criminal records

Every court in every case wherein a person is convicted of the violation of any criminal statute shall forthwith transmit to the State Bureau of Identification an abstract, duly certified, setting forth therein the names of the parties, the nature of the offense, the date of hearing, the plea, the judgment and the result. For this purpose the State Bureau of Identification shall furnish to said courts proper abstract forms.

1955, c. 120; 1963, c. 402, § 8.

§ 1548. Authorization of Governor and Council

Text of section as amended by 1975, c. 771, § 264, effective January 4, 1977

The law enforcement agencies of the State, upon request of the Commissioner of Public Safety, shall have the authority to take, or cause to be taken, and shall take, or cause to be taken, the fingerprints of any persons who shall request their fingerprints to be taken for civilian identification.

1975, c. 771, § 264, eff. Jan. 4, 1977.

§ 1550. Violations

Any person who fails to comply with the provisions of section 1542, subsections 1 or 3, or with the provisions of section 1542, subsection 4, imposing a duty to transmit criminal fingerprint records to the State Bureau of Identification, or with the provisions of sections 1544, 1547 or 1549 commits a civil violation for which a forfeiture of not more than $100 may be adjudged.

1975, c. 763, § 10.

CHAPTER 197

RECORDS

Sec.
1631. Records confidential.

§ 1631. Records confidential

All criminal and administrative records of the State Police and the Bureau of Identification are declared to be confidential, except:

1. Operational reports. Operational reports by the bureau;

2. Activity reports. Activity reports by the bureau;

3. Names. Names of State Police applicants;

4. Promotions. Promotions;

5. Resignations. Resignations;

6. Discharges. Discharges;

7. Retirements. Retirements;

8. Statistical reports. Statistical reports by Bureau of Identification;

9. Accident reports. Accident reports;

10. Further statistical reports. Statistical reports by Division of Traffic Records;

11. Accident information. Accident information on pending cases which would not jeopardize the investigation or prosecution of such cases;

12. Further statistical reports. Statistical reports by Division of Criminal Investigation;

13. Open court information. Information made available in open court;

14. Pending case information. Information on pending cases which would not jeopardize the investigation or prosecution;

15. Further statistical reports. Statistical reports by Division of Special Services on truck weights, public utility enforcement and beano;

16. Audits. Annual audits.

Such records other than the exceptions listed may be subpoenaed by a court of record.

1959, c. 223, § 1. 1971, c. 592, § 37.

CHAPTER 198

NEW ENGLAND STATE POLICE COMPACT

Sec.

§ 1665. Compact entered into by State

The New England State Police Compact is hereby entered into and enacted into law with any and all of the states legally joining therein in the form substantially as follows.

1965, c. 435.

Cross References

Interstate cooperation generally, see § 201 et seq. of Title 3.
State Police, generally, see § 1501 et seq. of this Title.

Library References

States ⇐6. C.J.S. States § 10.

§ 1666. Purposes—Article I

The purposes of this compact are to:

1. Detection and apprehension. Provide close and effective cooperation and assistance in detecting and apprehending those engaged in organized criminal activities;

2. Criminal intelligence bureau. Establish and maintain a central criminal intelligence bureau to gather, evaluate and disseminate to the appropriate law enforcement officers of the party states information concerning organized crime, its leaders and their associates;

3. Emergency assistance. Provide mutual aid and assistance in the event of police emergencies, and to provide for the powers, duties, rights, privileges and immunities of police personnel when rendering such aid.

1965, c. 435.

§ 1667. Entry into force and withdrawal—Article II

1. Force and effect. This compact shall enter into force when enacted into law by any 3 of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. Thereafter, this compact shall become effective as to any other of the aforementioned states upon its enactment thereof.

2. Withdrawal. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal, and any records, files or information obtained by officers or employees of a withdrawing state shall continue to be kept, used and disposed of only in such manner as is consistent with this compact and any rules or regulations pursuant thereto.

1965, c. 435.

Historical Note

Adoption by other states. The New England State Police Compact has been adopted by:

Connecticut. C.G.S.A. §§ 29-162 to 29-164.

Massachusetts. M.G.L.A. c. 147 App., §§ 1-1 to 1-3.

New Hampshire. R.S.A. 106-D:1 to 106-D:8.

Rhode Island. Gen.Laws 1956, §§ 42-37-1 to 42-37-3.

Vermont. 20 V.S.A. §§ 1951 to 1959.

§ 1669. Conference powers—Article IV

The conference shall have power to:

1. New England Criminal Intelligence Bureau. Establish and operate a New England Criminal Intelligence Bureau, in this chapter called "the bureau", in which shall be received, assembled and kept case histories, records, data, personal dossiers and other information concerning persons engaged or otherwise associated with organized crime.

2. Identification. Consider and recommend means of identifying leaders and emerging leaders of organized crime and their associates.

3. Mutual assistance arrangements. Facilitate mutual assistance among the state police of the party states pursuant to Article VII [§ 1672 of this Title] of this compact.

4. Claims and reimbursements. Formulate procedures for claims and reimbursements, pursuant to Article VII [§ 1672 of this Title] of this compact.

5. Promote cooperation. Promote cooperation in law enforcement and make recommendations to the party states and other appropriate law enforcement authorities for the improvement of such cooperation.

6. Other powers. Do all things which may be necessary and incidental to the exercise of the foregoing powers.

1965, c. 435.

Title 25

§ 1670. Disposition of records and information—Article V

The bureau established and operated pursuant to Article IV [§ 1669 of this Title], subsection 1, of this compact is designated and recognized as the instrument for the performance of a central criminal intelligence service to the state police departments of the party states. The files, records, data and other information of the bureau and, when made pursuant to the bylaws of the conference, any copies thereof shall be available only to duly designated officers and employees of the state police departments of the party states acting within the scope of their official duty. In the possession of the aforesaid officers and employees, such records, data and other information shall be subject to use and disposition in the same manner and pursuant to the same laws, rules and regulations applicable to similar records, data and information of the officer's or employee's agency and the provision of this compact.

1965, c. 435.

Art. 27, § 292. Expunging criminal arrest record of person not convicted; probation and discharge of first offenders.

(a) Whenever any person who has not previously been convicted of any offense under this subheading or under any other prior law of this State or the laws of the United States or of any other state relating to controlled dangerous substances as defined in this subheading, and who is tried for any offense specified in this subheading and is found not guilty, or where the charges against such person are dismissed in any manner, by either the court or the prosecuting authority, the court, if satisfied that the best interest of the person and the welfare of the people of this State would be served thereby, shall expunge the criminal record resulting from the arrest in such case. No expunged criminal arrest record shall thereafter be regarded as an arrest for purposes of employment, civil rights, or any statute or regulation or license or questionnaire or any other public or private purpose.

(b) Whenever any person who has not previously been convicted of any offense under this subheading or under any prior law of this State or the laws of the United States or of any other state relating to controlled dangerous substances defined in this subheading, pleads guilty to or is found guilty of any of the offenses specified in this subheading, the court, if satisifed that the best interests of the person and the welfare of the people of this State would be served thereby may, with the consent of such person stay the entering of the judgment of guilt, defer further proceedings, and place such person on probation subject to such reasonable terms and conditions as may be appropriate and may in addition require that such person undergo inpatient or outpatient treatment for drug abuse. Upon violation of a term or condition, the court may enter a judgment of conviction and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without a judgment of conviction and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by the law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under § 293 of this subheading. Discharge and dismissal under this section may occur only once with respect to any person and in addition any public criminal record in any such case shall be expunged upon the satisfactory completion of any such period of probation. Any expunged arrest and/or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute or regulation or license or questionnaire or any other public or private purpose, provided that any such conviction shall continue to constitute an offense for purposes of this subheading or any other criminal statute under which the existence of a prior conviction is relevant. (1970, ch. 403; 1971, ch. 273; 1972, ch. 278, § 1.)

Cross reference. — See Editor's note to § 276.

Editor's note. — Section 2, ch. 278, Acts 1972, provides that the act shall apply to all persons prosecuted under the subheading since its effective date of July 1, 1970.

This section should be read in pari materia with article 27, § 641A. 57 Op. Att'y Gen. 535 (1972).

Duty to expunge includes expungement of all police records relating to the offense including criminal records and criminal history file materials. 57 Op. Att'y Gen. 518 (1972).

Expungement seeks to prevent public or private access to records. — Expungement under subsections (a) and (b) requires the segregation of expunged records to prevent public or private access as opposed to physical destruction of the records. 57 Op. Att'y Gen. 518 (1972).

Court should not order record of conviction expunged simply because defendant was later pardoned. 58 Op. Att'y Gen. 340 (1973).

Probation may be for period longer than authorized sentence. — There is nothing improper in placing a defendant on probation under the provisions of subsection (b) for a period longer than the authorized sentence so long as the defendant consents to the conditions of probation and so long as the probation is "subject to such reasonable terms and conditions as may be appropriate." 57 Op. Att'y Gen. 535 (1972).

Quoted in Doe v. Commander, Wheaton Police Dep't, 273 Md. 262, 329 A.2d 35 (1974).

Cited in Bartlett v. State, 15 Md. App. 234, 289 A.2d 843 (1972).

Art. 27, § 293. Second or subsequent offenses.

(a) Any person convicted of any offense under this subheading is, if the offense is a second or subsequent offense, punishable by a term of imprisonment twice that otherwise authorized, by twice the fine otherwise authorized, or by both.

(b) For purposes of this section, an offense shall be considered a second or subsequent offense, if, prior to the conviction of the offense, the offender has at any time been convicted of any offense or offenses under this subheading or under any prior law of this State or any law of the United States or of any other state relating to the other controlled dangerous substances as defined in this subheading.

(c) Any person convicted of a second or subsequent offense under any law superseded by this subheading shall be eligible for parole, probation, and suspension of sentence in the same manner as those persons convicted under this subheading. (1970, ch. 403; 1971, ch. 500.)

Art. 27, § 735 ANNOTATED CODE OF MARYLAND

IV

CRIMINAL RECORDS

§ 735. Definitions.

(a) In this subtitle, the following words have the meanings indicated.

(b) *"Court records"* means all official records maintained by the clerk of a court or other court personnel pertaining to a criminal proceeding. It includes indices, docket entries, charging documents, pleadings, memoranda, transcriptions of proceedings, electronic recordings, orders, judgments, and decrees. It does not include:

(1) Records pertaining to violations of the vehicle laws of the State or of any other traffic law, ordinance, or regulation;

(2) Written opinions of a court that have been published;

(3) Cash receipt and disbursement records necessary for audit purposes; or

(4) A court reporter's transcript of proceedings in multiple defendant cases.

(c) *"Expungement,"* with respect to court records or police records, means the effective removal of these records from public inspection,

(1) By obliteration; or

(2) By removal to a separate secure area to which the public and other persons having no legitimate reason for being there are denied access; or

(3) If effective access to a record can be obtained only by reference to other records, by the expungement of the other records, or the part of them providing the access.

(d) *"Law-enforcement agency"* includes any state, county, and municipal police department or agency, sheriff's offices, the State's attorney's offices, and the Attorney General's office.

(e) *"Police records"* means all official records maintained by a law-enforcement agency pertaining to the arrest and detention of or further proceeding against a person on a criminal charge or for a suspected violation of a criminal law. It does not include investigatory files, police work-product records used solely for police investigation purposes, or records pertaining to violations of the vehicle laws of the State or of any other traffic law, ordinance, or regulation. (1975, ch. 260; 1976, ch. 525.)

§ 736. Expungement of police records; release without charge.

(a) *Notice and request for expungement.* — If a person is arrested, detained, or confined by a law-enforcement agency for a suspected violation of a criminal law other than a violation of the vehicle laws of the State or any other traffic law, ordinance, or regulation, and is released without being charged with the commission of a crime, he may give written notice of these facts to any law-enforcement agency which he believes may have police records concerning that arrest, detention, or confinement, and request the expungement of those police records.

(b) *General waiver and release.* — This notice may not be given prior to the expiration of the statute of limitations for tort actions arising from the incident unless the person attaches to the notice a written general waiver and release, in proper legal form, of all claim he may have against any person for tortious conduct arising from the incident. The notice and waiver are not subject to expungement, but shall be maintained by the law-enforcement agency at least until the expiration of any applicable statute of limitations. The notice must be given within eight years after the date of the incident.

(c) *Investigation.* — The law-enforcement agency shall, upon receipt of a timely filed notice, promptly investigate and attempt to verify the facts stated in the notice. If it finds the facts to be verified, it shall,

(1) Make a diligent search for any police records concerning that arrest, detention, or confinement of the person;

(2) Within 60 days after receipt of the notice, expunge the police records it has concerning that arrest, detention, or confinement; and

(3) Notify any other law-enforcement agency it believes may have police records concerning that arrest, detention, or confinement of the notice and its verification of the facts contained in it. A copy of this notice shall be sent to the person requesting expungement.

(d) *Duties of other agencies.* — The other law-enforcement agency shall, within 30 days after receipt of the notice provided for in subsection (c) (3),

(1) Make a diligent search for any police records concerning the arrest, detention, or confinement; and

(2) Expunge the police records it has concerning that arrest, detention, or confinement.

(e) *Denial of request.* — If the law-enforcement agency to which the person has addressed his notice finds that the person is not entitled to an expungement of the police records, it shall, within 60 days after receipt of the notice, advise the person in writing of its denial of the request for expungement and of the reasons for its denial.

(f) *Court order.* — A person whose request for expungement is denied in accordance with subsection (e) may, within 30 days after written notice of the denial is mailed or otherwise delivered to him, file an application in the District Court having proper venue against the law-enforcement agency for an order of expungement. If the court finds, after a hearing held upon proper notice to the agency, that the person is entitled to expungement, it shall enter an order requiring the agency to comply with subsection (c). Otherwise, it shall deny the application. The agency is deemed to be a party to the proceeding. All parties to the proceeding have the right of appellate review on the record provided for in the Courts and Judicial Proceedings Article with respect to appeals in civil cases from the District Court. (1975, ch. 260.)

§ 737. Expungement of police and court records.

(a) *Petition for expungement.* — If a person is charged with the commission of a crime and

(1) Is acquitted, or

(2) The charge is otherwise dismissed or quashed, or

(3) A judgment of probation without finding a verdict or probation on stay of entry of judgment is entered, or

(4) A nolle prosequi is entered, or

(5) The proceeding is placed on the stet docket,

he may file a petition setting forth the relevant facts and requesting expungement of both the police records and the court records pertaining to the charge.

(b) *Where petition filed.* — The petition shall be filed in the court in which the proceeding was commenced. If the proceeding was commenced in one court and transferred to another court, the petition shall be filed in the court to which the proceeding was transferred. If the proceeding in a court of original jurisdiction was appealed to a court exercising appellate jurisdiction, the petition shall be filed in the appellate court. However, the appellate court may remand the matter to the court of original jurisdiction.

(c) *Time of filing.* — The petition may not be filed earlier than three years nor later than eight years after the date the judgment or order was entered or the action was taken which terminated the proceeding. However, except for an acquittal on grounds of insanity, the three-year waiting period does not apply to a charge specified in subsection (a) (1) or (a) (2) if a person files, with the petition, a written general waiver and release, in proper legal form, of all claim he may have against any person for tortious conduct arising from the charge.

(d) *Objection to petition.* — A copy of the petition shall be served on the State's attorney. Unless the State's attorney files an objection to the petition within 30 days after it is served on him, the court shall enter an order requiring the expungement of police records and court records pertaining to the charge.

(e) *Hearing by court; granting or denial of expungement.* — If the State's attorney files a timely objection to the petition, the court shall conduct a hearing. If the court finds that the person is entitled to expungement, it shall enter an order requiring the expungement of police records and all court records pertaining to the charge. Otherwise, it shall deny the petition. If the petition is based upon the entry of a judgment of probation without finding a verdict, probation on stay of entry of judgment, a nolle prosequi, or placement on the stet docket, the person is not entitled to expungement if:

(1) He has since been convicted of any crime, other than violations of the State vehicle laws or other traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment, or

(2) He is then a defendant in a pending criminal proceeding.

(f) *Appellate review.* — The State's attorney is a party to the proceeding. Any party aggrieved by the decision of the court has the right of appellate review provided in the Courts and Judicial Proceedings Article.

(g) *Notice of compliance.* — Every custodian of the police records and court records subject to the order shall, within 60 days after entry of the order, unless it is stayed pending an appeal, advise the court and the person in writing of compliance with the order. (1975, ch. 260; 1976, chs. 842, 863.)

§ 738. Consolidated charges.

For purposes of this subtitle, two or more charges arising from the same incident, transaction, or set of facts, shall be considered as a unit. If a person is not entitled to an expungement of any one charge of a unit, he is not entitled to expungement of the other charges in the unit. (1975, ch. 260.)

§ 739. Disclosure of expunged records.

(a) *Disclosure unlawful.* — It is unlawful for any person having or acquiring access to an expunged record to open or review it or to disclose to another person any information from it without an order from the court which ordered the record expunged, or, in the case of police records expunged pursuant to § 736, the District Court having venue.

(b) *Hearing and notice required.* — Except as provided in subsection (c), a court shall not enter an order authorizing the opening or review of an expunged record or the disclosure of information from it except after a hearing held upon notice to the person to whom the record pertains and upon good cause shown.

(c) *Ex parte order.* — Upon a verified petition filed by the State's attorney alleging that the record is needed by a law-enforcement agency for purposes of a pending criminal investigation and that the investigation will be jeopardized or that life or property will be endangered without immediate access to the record, the court may enter an ex parte order, without notice to the person, permitting such access. An ex parte order may permit a review of the record, but may not permit a copy to be made of it.

(d) *Penalties.* — A person who violates this section is guilty of a misdemeanor, and, upon conviction, is subject to a fine of not more than $1,000 or imprisonment for not more than one year, or both. If the person is an official or employee of the State or of any subdivision of the State, he shall, in addition to these penalties, be subject to removal or dismissal from public service on grounds of misconduct in office. (1975, ch. 260.)

§ 740. Prohibited practices by employers and educational institutions.

(a) *Applicants for employment or admission.* — An employer or educational institution may not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning criminal charges against him that have been expunged. An applicant need not, in answer to any question concerning criminal charges that have not resulted in a conviction, include a reference to or information concerning charges that have been expunged. An employer may not discharge or refuse to hire a person solely because of his refusal to disclose information concerning criminal charges against him that have been expunged.

(b) *Applicants for licenses, etc.* — Agencies, officials, and employees of the State and local governments may not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning criminal charges against him that have been expunged. An applicant need not, in answer to any question concerning criminal charges that have not resulted in a conviction, include a reference to or information concerning charges that have been expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning criminal charges against him that have been expunged.

(c) *Penalties.* — A person who violates this section is guilty of a misdemeanor, and, upon conviction, is subject to a fine of not more than $1,000 or imprisonment for not more than one year, or both, for each violation. If the person is an official or employee of the State or any subdivision of the State, he shall, in addition to these penalties, be subject to removal or dismissal from public service on grounds of misconduct in office. (1975, ch. 260.)

§ 741. Retroactivity.

(a) Police records and court records which were made prior to July 1, 1975, and are presently maintained are subject to expungement in accordance with this subtitle.

(b) A person who, on or after July 1, 1975, becomes entitled to the expungement of police records or court records made prior to that date may utilize the procedures set forth in this subtitle for expungement. The limitation periods provided in §§ 736 and 737 shall, in that case, be deemed to date from the first day the person becomes entitled to expungement.

(c) With respect to police records or court records made prior to July 1, 1975, subject to expungement under this subtitle, the duty of the custodian is to make a reasonable search. There is no duty to expunge records that cannot be located after a reasonable search. (1975, ch. 260.)

CRIMINAL JUSTICE INFORMATION SYSTEM

§ 742. Purpose of subtitle; legislative findings.

(a) The purpose of this subtitle is to create and maintain an accurate and efficient criminal justice information system in Maryland consistent with applicable federal law and regulations, the need of criminal justice agencies in the State for accurate and current criminal history record information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

(b) In order to achieve this result, the General Assembly finds that there is a need:

(1) To create a central repository for criminal history record information;

(2) To require the reporting of accurate, relevant, and current information to the central repository by all criminal justice agencies;

(3) To ensure that criminal history record information is kept accurate and current; and

(4) To prohibit the improper dissemination of such information.

(c) This subtitle is intended to provide a basic statutory framework within which these objectives can be attained. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that the act shall take effect Dec. 31, 1977, except that §§ 742, 743, 744, 745, 746, 748, 751, 752, and 753 shall take effect July 1, 1976.

§ 743. Definitions.

(a) As used in this subtitle, the following words have the meanings indicated.

(b) *"Advisory Board"* means the Criminal Justice Information Advisory Board.

(c) *"Central repository"* means the criminal justice information system central repository created by § 747 (b) of this article.

(d) *"County"* includes Baltimore City.

(e) *"Criminal history record information"* means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) Data pertaining to a proceeding under Subtitle 8 of Title 3 of the Courts Article (Juvenile Causes), but it does include data pertaining to a person following waiver of jurisdiction by a juvenile court;

(3) Wanted posters, police blotter entries, court records of public judicial proceedings, or published court opinions;

(4) Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, except offenses involving death or injury to a person, or offenses under § 21-902 of the Transportation Article;

(5) Data concerning the point system established by the Motor Vehicle Administration in accordance with the provisions of Title 16 of the Transportation Article;

(6) Presentence investigation and other reports prepared by a probation department for use by a court in the exercise of criminal jurisdiction or by the Governor in the exercise of his power of pardon, reprieve, commutation, or nolle prosequi; or

(7) Data contained in current case-in-progress systems or records pertinent to public judicial proceedings which are reasonably contemporaneous to the event to which the information relates.

(f) *"Criminal justice agency"* means any government agency or subunit of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term does not include the Juvenile Services Administration or a juvenile court, but it does include the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(1) State, county, and municipal police departments and agencies, sheriffs' offices, correctional facilities, jails, and detention centers;

(2) The offices of the Attorney General, the State's attorneys, and any other person authorized by law to prosecute persons accused of criminal offenses;

(3) The Administrative Office of the Courts, the Court of Appeals, the Court of Special Appeals, the circuit courts, including the courts of the Supreme Bench of Baltimore City, the District Court of Maryland, and the offices of the clerks of these courts.

(g) *"Criminal justice information system"* means the equipment (including computer hardware and software), facilities, procedures, agreements, and personnel used in the collection, processing, preservation, and dissemination of criminal history record information.

(h) *"Disseminate"* means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) The reporting of such information as required by § 747 of this article; or

(3) The transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(i) *"Reportable event"* means an event specified or provided for in § 747.

(j) *"Secretary"* means the Secretary of Public Safety and Correctional Services. (1976, ch. 239; 1977, ch. 765, § 8.)

Effect of amendment. — The 1977 amendment, effective July 1, 1977, substituted "§ 21-902 of the Transportation Article" for "§ 11-902 of Article 66½ of the Code" at the end of paragraph (4) in subsection (e) and substituted "Title 16 of the Transportation Article" for "Subtitle 6, Part VII of Article 66½ of the Code" at the end of paragraph (5).

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

§ 744. Criminal Justice Information Advisory Board created; composition; appointment and terms of members; chairman; vacancy; compensation and expenses; staff.

(a) *Created; term; composition; designation of representative.* — There is a Criminal Justice Information Advisory Board which, for administrative and budgetary purposes only, is within the Department of Public Safety and Correctional Services. Subject to the provisions of subsection (b), the members shall be appointed for a term of three years. One member shall be designated by the Governor as chairman. Each member, other than the member from the general public, may designate a person to represent him at any board meeting, but the designee may not vote. The Advisory Board consists of the following members:

(1) One member of the Maryland Senate appointed by the President of the Senate;

(2) One member of the House of Delegates appointed by the Speaker of the House of Delegates;

(3) The executive director of the Governor's Commission on Law Enforcement and the Administration of Justice;

(4) Three persons from the judicial branch of State government appointed by the Chief Judge of the Court of Appeals;

(5) The Secretary of Public Safety and Correctional Services;

(6) Two executive officials from State, county, or municipal police agencies;

(7) One executive official from a correctional services agency;

(8) Two elected county officials;

(9) The Attorney General of Maryland;

(10) One elected municipal official;

(11) One State's attorney; and

(12) One person from the general public.

(b) *Appointment of members.* — Except for those members appointed by the President of the Senate, the Speaker of the House, and the Chief Judge of the Court of Appeals, all members are appointed by the Governor. The executive director of the Governor's Commission, the Secretary of Public Safety and Correctional Services, and the Attorney General shall serve ex officio.

(c) *Vacancy.* — A vacancy occurring before the expiration of a term shall be filled by the appointing authority for the remainder of the term. A member serves until his successor is appointed and qualifies.

(d) *Compensation and expenses.* — Members shall receive no compensation for their services, but shall be reimbursed from their reasonable expenses as provided in the State budget.

(e) *Use of staff and facilities of other agencies.* — In the performance of its functions, the Advisory Board may use the services of the staff and the facilities of the Department of Public Safety and Correctional Services, the Administrative Office of the Courts, and the Governor's Commission on Law Enforcement and the Administration of Justice, subject to the approval of the head of the respective department or agency. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

§ 745. Duties of Advisory Board.

(a) *Generally.* — The Advisory Board shall perform the duties set forth in this section and those of an advisory nature that may otherwise be delegated to it in accordance with law.

(b) *Information to Secretary and Court of Appeals.* — It shall advise the Secretary and the Court of Appeals and its Chief Judge on matters pertaining to the development, operation, and maintenance of the criminal justice information system, and shall monitor the operation of the system.

(c) *Rules and regulations.* — It shall propose and recommend to the Secretary, and, in conjunction with the Standing Committee on Rules of the Court of Appeals, to the Court and its Chief Judge, rules and regulations necessary to the development, operation, and maintenance of the criminal justice information system.

(d) *Recommendations and reports.* — It shall:

(1) Recommend procedures and methods for the use of criminal history record information for the purpose of research, evaluation, and statistical analysis of criminal activity;

(2) Recommend any legislation necessary for the implementation, operation, and maintenance of the criminal justice information system; and

(3) Report annually to the Governor and the General Assembly on the development and operation of the criminal justice information system. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

§ 746. Adoption of rules.

(a) *Duty of Secretary and Court of Appeals.* — The Secretary shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this subtitle and to establish, operate, and maintain the criminal justice information system.

The Court of Appeals and its Chief Judge, acting pursuant to §§ 18 and 18A of Article IV of the Constitution of Maryland, shall adopt appropriate rules and regulations for the same purposes for the judicial branch of government.

(b) *Scope of rules.* — Subject to the provisions of Article 15A, § 23B, the rules and regulations adopted by the Secretary, the Court, and the Chief Judge shall include those:

(1) Governing the collection, reporting, and dissemination of criminal history record information by the courts and all other criminal justice agencies;

(2) Necessary to insure the security of the criminal justice information system and all criminal history record information reported and collected from it;

(3) Governing the dissemination of criminal history record information in accordance with the provisions of this subtitle and the provisions of §§ 735 to 741;

(4) Governing the procedures for inspection and challenging of criminal history record information;

(5) Governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with the provisions of this subtitle and the provisions of §§ 735 to 741;

(6) Governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies;

(7) Governing the exercise of the rights of inspection and challenge provided for in §§ 751 through 755.

(c) *Consistent with subtitle.* — Rules and regulations adopted by the Secretary or the Court or its Chief Judge may not be inconsistent with the provisions of this subtitle. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

§ 747. Reporting criminal history record information; central repository.

(a) *Reportable events.* — The following events are reportable events under this subtitle:

(1) Issuance or withdrawal of an arrest warrant;

(2) An arrest;

(3) Release of a person after arrest without the filing of a charge;

(4) Presentment of an indictment, filing of a criminal information, or filing of a statement of charges;

(5) A release pending trial or appeal;

(6) Commitment to a place of pretrial detention;

(7) Dismissal or quashing of an indictment or criminal information;

(8) A nolle prosequi;

(9) Placement of a charge on the stet docket;

(10) An acquittal, conviction, or other disposition at or following trial, including a finding of probation before judgment;

(11) Imposition of a sentence;

(12) Commitment to a correctional facility, whether State or locally operated;

(13) Release from detention or confinement;

(14) An escape from confinement;

(15) A pardon, reprieve, commutation of sentence, or other change in a sentence, including a change ordered by a court;

(16) Entry of an appeal to an appellate court;

(17) Judgment of an appellate court;

(18) Order of a court in a collateral proceeding that affects a person's conviction, sentence, or confinement; and

(19) Any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the Secretary or the Court of Appeals.

(b) *Establishment and operation of central repository.* — There is a criminal justice information system central repository for the collection, storage, and dissemination of criminal history record information. The central repository shall be operated by the Maryland State Police, under the administrative control of the Secretary, with the advice of the Advisory Board.

(c) *Time for reporting criminal history record information.* — Every criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with the following provisions:

(1) Data pertaining to an arrest or the issuance of an arrest warrant shall be reported within 72 hours after the arrest is made or the warrant is issued whichever first occurs;

(2) Data pertaining to the release of a person after arrest without the filing of a charge shall be reported within 30 days after the person is released;

(3) Data pertaining to any other reportable event shall be reported within 60 days after occurrence of the event;

(4) The time requirements in this subsection may be reduced by rules adopted by the Secretary or the Court of Appeals.

(d) *Reporting methods.* — Reporting methods may include:

(1) Submittal of criminal history record information by a criminal justice agency directly to the central repository;

(2) If the information can readily be collected and reported through the court system, submittal to the central repository by the administrative office of the courts; or

(3) If the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by such agencies.

(e) *Maintenance and dissemination of more detailed information.* — Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository. However, the dissemination of any such criminal history record information is governed by the provisions of § 749.

(f) *Avoidance of duplication in reporting.* — The Secretary and the Court of Appeals may determine, by rule, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting. (1976, ch. 239.)

§ 748. Agreements with criminal justice agencies; sharing criminal history record information.

(a) *Duty of Secretary and Court of Appeals; provisions of agreements.* — The Secretary and the Court of Appeals, pursuant to the rules adopted by them, shall develop agreements between the central repository and criminal justice agencies pertaining to:

(1) The method by which the agency will report information, including the method of identifying an offender in a manner that permits other criminal justice agencies to locate the offender at any stage in the criminal justice system, the time of reporting, the specific data to be reported by the agency, and the place of reporting;

(2) The services to be provided to the agency by the central repository;

(3) The conditions and limitations upon the dissemination of criminal history record information by the agency;

(4) The maintenance of security in all transactions between the central repository and the agency;

(5) The method of complying with the right of a person to inspect, challenge, and correct criminal history record information maintained by the agency;

(6) Audit requirements to ensure the accuracy of all information reported or disseminated;

(7) The timetable for the implementation of the agreement;

(8) Sanctions for failure of the agency to comply with any of the provisions of this subtitle, including the revocation of any agreement between the agency and the central repository and appropriate judicial or administrative proceedings to enforce compliance; and

(9) Other provisions that the Court of Appeals and the Secretary may deem necessary.

(b) *Sharing information with other states and countries and federal agencies.* — The Secretary and the Chief Judge of the Court of Appeals may develop procedures for the sharing of criminal history record information with federal criminal justice agencies and criminal justice agencies of other states and other countries, consistent with the provisions of this subtitle. (1976, ch. 239.)

§ 749. Dissemination of criminal history record information.

A criminal justice agency and the central repository may not disseminate criminal history record information except in accordance with the applicable federal law and regulations. (1976, ch. 239.)

§ 750. Compliance with §§ 735 to 741.

Notwithstanding any other provisions of this subtitle no record may be maintained or disseminated inconsistently with the provisions of §§ 735 through 741 of Article 27. (1976, ch. 239.)

§ 751. Right of inspection; copies.

(a) Subject to the provisions of § 752 (f), a person may inspect criminal history record information maintained by a criminal justice agency concerning him. A person's attorney may inspect such information if he satisfactorily establishes his identity and presents a written authorization from his client.

(b) Nothing in this section requires a criminal justice agency to make a copy of any information or allows a person to remove any document for the purpose of making a copy of it. A person having the right of inspection may make notes of the information. (1976, ch. 239.)

Art. 27, § 752

§ 752. Challenging information.

(a) *Notice of challenge.* — A person who has inspected criminal history record information relating to him may challenge the completeness, contents, accuracy, or dissemination of such information by giving written notice of his challenge to the central repository and to the agency at which he inspected the information, if other than the central repository. The notice shall set forth the portion of the information challenged, the reason for the challenge, certified documentation or other evidence supporting the challenge, if available, and the change requested in order to correct or complete the information or the dissemination of the information. The notice shall contain a sworn statement, under penalty of perjury, that the information in or supporting the challenge is accurate and that the challenge is made in good faith.

(b) *Audit of information; notice of repository's determination.* — Upon receipt of the notice, the central repository shall conduct an audit of that part of the person's criminal history record information necessary to determine the accuracy of the challenge. As part of the audit, the central repository may require any criminal justice agency that was the source of challenged information to verify the information. The central repository shall notify the person of the results of its audit and its determination within 90 days after receipt of the notice of challenge. This notice shall be in writing, and, if the challenge or any part of it is rejected, the notice shall inform the person of his rights of appeal.

(c) *Correction of records.* — If the challenge or any part of it is determined to be valid, the central repository shall make the appropriate correction on its records and shall notify any criminal justice agency which has custody of the incomplete or inaccurate information, or portion of it of the correction, and the agency shall take appropriate steps to correct its records. The agency shall certify to the central repository that the correction was made.

(d) *Notice of correction when information disseminated.* — A criminal justice agency required to correct any criminal history record information pursuant to subsection (c) that had previously disseminated such information shall give written notice to the agency or person to whom the information was disseminated of the correction. That agency or person shall promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

(e) *Notice to agencies of denial of challenge.* — If the challenge, or any part of it, is denied, the central repository shall give written notice of the denial to any agency with which a copy of the challenge was filed.

(f) *Inspection or challenge of information relevant to pending criminal proceeding.* — A person is not entitled to inspect or challenge any criminal history record information pursuant to this subtitle if the information or any part of it is relevant to a pending criminal proceeding. This subsection does not affect any right of inspection and discovery permitted under Chapter 700 of the Maryland Rules or the Maryland District Rules, or permitted under any statute, rule, or regulation not part of or adopted pursuant to this subtitle.

(g) *Delay in requiring performance of duties by central repository.* — The provisions of this section concerning the duties of the central repository may, by rule of the Secretary, be delayed until the Secretary determines that the central repository is able to comply with them, but not later than July 1, 1977. Until then, the duties of the central repository shall be performed by the appropriate criminal justice agencies. (1976, ch. 239.)

§ 753. Rights of appeal.

(a) *Rules for administrative appeals.* — The Secretary and the Court of Appeals shall adopt appropriate rules and procedures for administrative appeals from decisions by criminal justice agencies denying the right of inspection of, or challenges made to, criminal history record information.

These rules shall include provisions for:

(1) The forms, manner, and time for taking an appeal;

(2) The official or tribunal designated to hear the appeal;

(3) Hearing and determining the appeal; and

(4) Implementing the decision on appeal.

(b) *Right to take administrative appeal.* — A person aggrieved by a decision of a criminal justice agency concerning inspection or a challenge may take an administrative appeal in accordance with the rules and procedures adopted by the Secretary and the Court of Appeals.

(c) *Judicial review.* — A person aggrieved by a decision on an administrative appeal, including the central repository and a criminal justice agency, may seek judicial review in accordance with the Administrative Procedure Act and the Maryland Rules. (1976, ch. 239.)

Editor's note. — Section 3, ch. 239, Acts 1976, provides that this section shall take effect July 1, 1976.

§ 754. Requiring inspection or challenge of information in order to qualify for employment.

(a) It is unlawful for any employer or prospective employer to require a person to inspect or challenge any criminal history record information relating to that person for the purpose of obtaining a copy of the person's record in order to qualify for employment.

(b) Any person violating the provisions of this section is guilty of a misdemeanor, and, upon conviction, is subject to a fine of not more than $5,000 or imprisonment for not more than six months, or both, for each violation. (1976, ch. 239.)

Effective Dec. 31, 1977. — See Editor's note to § 742 of this article.

§ 755. Inspection and challenge of information recorded prior to July 1, 1976.

Criminal history record information which was recorded prior to July 1, 1976 is subject to the right of access and challenge in accordance with this subtitle. However, the duty of a criminal justice agency is to make a reasonable search for such information. There is no duty to provide access to criminal history record information that cannot be located after a reasonable search. (1976, ch. 239.)

§ 10. Preservation of rights.

(a) The determination that a person is a drug addict and the subsequent civil commitment under § 9 shall not be deemed a criminal conviction. No facts or results of any proceeding, examination, test, or procedure to determine that a person is a drug addict pursuant to a civil commitment proceeding under this article shall be used against such person in any other proceeding.

(b) Whenever a person shall seek counselling, treatment or therapy for any form of drug abuse from a physician, psychologist, hospital, an educator pursuant to the provisions of § 85A of Article 77, or a person, program or facility authorized by the Authority to counsel or treat any form of drug abuse, no statement, whether oral or written, made by such person and no observation or conclusion derived from such counselling, treatment or therapy made by such physician, psychologist, hospital, person, program or facility shall be admissible against such person in any proceeding. The facts or results of any examination to determine the existence of illegal or prohibited drugs in a person's body shall not be admissible in any proceeding against such person, provided that the facts or results of any such examination ordered pursuant to a civil commitment proceeding under this article or as a condition of parole or probation shall be admissible in the proceeding for which the examination was ordered. (1971, chs. 692, 780.)

§ 22. Confidentiality of information assembled or procured by Authority.

(a) *Confidential records; limited use.*—All records, reports, statements, notes and other information which has been assembled or procured by the Authority for purposes of research and study and which name or otherwise identify any person or persons shall be confidential records within the custody and control of the Authority, and may be used only for the purposes of research and study for which assembled or procured.

(b) *Penalty for violation.*—It is unlawful for any person to give away or otherwise to divulge to a person or persons not engaged in such research and study for the Authority, any of such records, reports, statements, notes, or other information, which name or otherwise identify any person or persons. Any person who violates any provision of this subtitle is guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars ($50.00).

(c) *Applicability of §§ 5-302 and 10-205 (a) of Courts Article.* — Access to and use of any such records, reports, statements, notes, or other information also are protected and regulated by the provisions of § 5-302 and § 10-205 (a) of the Courts Article of the Code.
(1974, ch. 865, § 9.)

(d) *Exception as to summaries or references.*—Nothing in this section applies to or restricts the use or publicizing of statistics, data or other material which summarize or refer to any such records, reports, statements, notes or information in the aggregate and without referring to or disclosing the identity of any individual person or persons. (1969, ch. 404.)

ARTICLE 76A.

PUBLIC INFORMATION.

§ 1. Definitions.

As used in this article:

(a) *Public records — Defined.* — The term "public records" when not otherwise specified shall include any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing, or other document, regardless of physical form or characteristics, and including all copies thereof, that have been made by the State and any counties, municipalities and political subdivisions thereof and by any agencies of the State, counties, municipalities, and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law. The term "public records" also includes the salaries of all State employees, both in the classified and nonclassified service, and all county and municipal employees, whether in a classified or nonclassified service.

(b) *Same — Classification.* — Public records shall be classified as follows:

(i) The term "official public records" shall include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the State or any agency or subdivision thereof may be a party; all fidelity, surety and performance bonds; all claims filed against the State or any agency or subdivisions thereof; all records or documents required by law to be filed with or kept by any agency or the State;

(ii) The term "office files and memoranda" shall include all records, correspondence, exhibits, books, booklets, drawings, maps, blank forms, or documents not above defined and classified as official public records; all duplicate copies of official public records filed with any agency of the State or subdivision thereof; all documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and all other documents or records, determined by the records committee to be office files and memoranda.

(c) *Writings.* — The term "writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics.

(d) *Political subdivision.* — The term "political subdivision" means and includes every county, city and county, city, incorporated and unincorporated town, school district and special district within the State.

(e) *Official custodian.* — The term "official custodian" means and includes any officer or employee of the State or any agency, institution or political subdivision thereof, who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(f) *Custodian.* — The term "custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(g) *Person.* — The term "person" means and includes any natural person, corporation, partnership, firm or association.

(h) *Person in interest.* — The term "person in interest" means and includes the person who is the subject of a record or any representative designated by said person, except that if the subject of the record is under legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative. (1970, ch. 698; 1973, ch. 63.)

Effect of amendment. — The 1973 amendment added the last sentence in subsection (a).

Police records must be considered "public records" in light of subsection (a). 57 Op. Att'y Gen. 518 (1972).

§ 2. Inspection of public records generally; rules and regulations; procedure when records not immediately available; special provisions as to Harford and Charles counties.

(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this article or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as shall be reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact.

(c) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage, and therefore not available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact and shall set forth a date and hour within a reasonable time at which time the record will be available for the exercise of the right given by this article.

(d) All written documents presented to the County Commissioners of Harford County shall be open and available to the press and to the public of Harford County. The attorney for the county and the county director of public information shall disclose the contents of any document publicly presented to either of them upon the demand of any citizen of Harford County.

(e) In Charles County, except for records kept by officials, agencies or departments of the State of Maryland, public information shall be regulated by § 6 of this article. (1970, ch. 698; 1972, ch. 601; 1974, ch. 239.)

Art. 76A, § 3

§ 3. Custodian to allow inspection of public records; exceptions; denial of right of inspection of certain records; court order restricting disclosure of records ordinarily open to inspection.

(a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (b) or (c) of this section:

(i) Such inspection would be contrary to any State statute;

(ii) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or

(iii) Such inspection is prohibited by rules promulgated by the Court of Appeals, or by the order of any court of record.

(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest;

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the Attorney General, police department or any investigatory files compiled for any other law-enforcement or prosecution purposes;

(ii) Test questions, scoring keys and other examination data pertaining to administration of a licensing examination, for employment or academic examination; except that written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(iii) The specific details of bona fide research projects being conducted by a State institution;

(iv) The contents of real estate appraisals made for the State or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the State or political subdivision, except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by statute.

(v) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency.

(c) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

(i) Medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports;

(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except that such files shall be available to the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work;

(iv) Letters of reference;

(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person;

(vi) Library, archives and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contribution; and

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care, and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him.

(ix) Circulation records maintained by public libraries showing personal transactions by those borrowing from them.

(d) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied, and it shall be furnished forthwith to the applicant.

(e) Any person denied the right to inspect any record covered by this article may apply to the circuit court of the county where the record is found for any order directing the custodian of such record to show cause why he should not permit the inspection of such record.

(f) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the circuit court of the county where the record is located for an order permitting him to restrict such disclosure. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of said hearing served upon him in the manner provided for service of process by the Rules of Procedure and shall have the right to appear and be heard. (1970, ch. 698; 1971, chs. 421, 611; 1972, ch. 24; 1974, ch. 216; ch. 683, § 5.)

§ 4. Copies, printouts and photographs of public records.

(a) In all cases in which a person has the right to inspect any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(b) If the custodian does not have the facilities for making copies, printouts or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the records are in the possession, custody and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printingout or photographing as he may charge for furnishing copies under this section. (1970, ch. 698.)

§ 5. Penalty for violations.

Any person who willfully and knowingly violates the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars ($100.00). (1970, ch. 698; 1971, ch. 611.)

ARTICLE 88B.

STATE POLICE.

Art. 88B, § 1

§ 1. Part of Department of Public Safety and Correctional Services.

The Maryland State Police as heretofore established shall have powers and duties and shall be administered in accordance with this article. The Maryland State Police shall be part of the Department of Public Safety and Correctional Services. The exercise and performance by the Maryland State Police and by the Superintendent of all authority, powers, duties and functions vested in the Maryland State Police or in the Superintendent by this article or by any other provisions of law, shall be subject to the authority of the Secretary of Public Safety and Correctional Services set forth in Article 41 of this Code or in other provisions of law. (1968, ch. 547, § 1; 1970, ch. 401, § 8.)

§ 6. Training facilities.

The Department shall make its training facilities available to any law enforcement agency of the State and the Police Training Commission to the extent permitted by fiscal appropriation and the availability of such facilities and employees of the Department. The extent of use of such facilities, the course of training, and the qualifications of persons using such facilities shall be established by rule of the Superintendent. (1968, ch. 547, § 1.)

§ 7. Communications systems.

Any law enforcement agency of the State or any State agency may be permitted to connect with and use any teletypewriter, voice communication, data communication, message switching or other communication system established by the Department for State-wide use. Such connection and use shall be subject to and in accordance with rules established by the Superintendent to promote the purposes of this subtitle, to insure the effective, economical, and efficient utilization of the entire system, and to prevent interference with the law enforcement duties of the Department. Violation of such rules shall constitute sufficient basis for withdrawal of permission to connect with and use such system. To the extent permitted by specific budget appropriation, the cost of rental of such equipment and the circuitry necessary thereto shall be paid by the State, except rental and/or purchase costs of terminal devices and the circuitry necessary thereto tied to the State Police Computer System; all supplies and other charges connected therewith shall be paid by the law enforcement agency. (1968, ch. 547, § 1.)

§ 9. Criminal information.

The Department shall collect, analyze, and disseminate information relative to the incidence of crime within the State, the identity of known and suspected offenders, and the arrest, disposition, and incarceration of such offenders. All law enforcement agencies of the State and all places for the confinement of persons convicted of crime, including Patuxent Institution and hospitals for the criminally insane, shall furnish such information at such times, in such form, and to such extent as may be prescribed by rule of the Superintendent. (1968, ch. 547, § 1.)

§ 10. Dissemination of information to participating agencies.

Any information, records, and statistics collected pursuant to this subtitle shall be available for use by any agency required to furnish information, to the extent that such information is reasonably necessary or useful to such agency in carrying out the duties imposed upon it by law. The Superintendent may by rule establish such conditions for the use or availability of such information as may be necessary to its preservation, the protection of confidential information, or the circumstances of a pending prosecution. (1968, ch. 547, § 1.)

§ 11. Dissemination of information to public.

The Department shall at least monthly publish statistics concerning the occurrence and cause of all motor vehicle accidents within the State. The Department shall also publish periodic statistics of the incidence of crime within the State. No such statistical report shall name or otherwise identify a particular known or suspected offender. Reports required by this section shall be distributed to all agencies which contributed information contained in such reports, to the press, and to all other interested persons. In addition, the Superintendent may prescribe by rule the conditions under which reports of specific motor vehicle accidents may be made available upon request to the public; and the fee for furnishing any such report shall be two dollars ($2.00) and the moneys received therefrom shall be used by the Department to be applied to the cost of providing this service. (1968, ch. 547, § 1; 1973, ch. 270.)

Effect of amendment. — The 1973 amendment, effective July 1, 1973, substituted "two dollars ($2.00) and the moneys received therefrom shall be used by the Department to be applied to the cost of providing this service" for "$1.00."

§ 12. Recommendations by Department.

Any report issued by the Department pursuant to § 11 of this article may include recommendations to the Governor, the Secretary of Public Safety and Correctional Services, and the General Assembly of such legislation as the contents of the reports indicate is necessary or desirable to promote traffic safety, reduce crime, or otherwise insure proper law enforcement. (1968, ch. 547, § 1; 1970, ch. 401, § 8.)

§ 167. Definitions.

The following words shall, whenever used in this section or in sections one hundred and sixty-eight to one hundred seventy-eight, inclusive, have the following meanings unless the context otherwise requires: "Criminal justice agencies", those agencies at all levels of government which perform as their principal function, activities relating to *(a)* crime prevention, including research or the sponsorship of research; *(b)* the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders; or *(c)* the collection, storage, dissemination or usage of criminal offender record information.

"Criminal offender record information", records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation and release. Such information shall be restricted to that recorded as the result of the initiation of criminal proceedings or of any consequent proceedings related thereto. It shall not include intelligence, analytical and investigative reports and files, nor statistical records and reports in which individuals are not identified and from which their identities are not ascertainable.

"Interstate systems", all agreements, arrangements and systems for the interstate transmission and exchange of criminal offender record information. Such systems shall not include record-keeping systems in the commonwealth maintained or controlled by any state or local agency, or group of such agencies, even if such agencies receive or have received information through, or otherwise participated or have participated in, systems for the interstate exchange of criminal record information.

"Purge", remove from the criminal offender record information system such that there is no trace of information removed and no indication that said information was removed. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

Editorial Note—

Section 9 of the inserting act, provides as follows:

SECTION 9. This act shall take effect conformably to law, except that any agency, department, institution, or individual which is authorized by statute to receive criminal offender record information or which receives the same at the discretion of the commissioner of probation, on the effective date of this act, shall continue to receive the same, notwithstanding any provision of this act to the contrary, until January first, nineteen hundred and seventy-three.

§ 168. Criminal History Systems Board; Powers and Duties; Report.

There shall be a criminal history systems board, hereinafter called the board, consisting of the following persons: the attorney general, the chairman of the Massachusetts defenders committee, the chairman of the

parole board, the chief justice of the district courts, the chief justice of the superior court, the chief justice of the supreme judicial court, the commissioner of the department of correction, the commissioner of the department of public safety, the commissioner of the department of youth services, the commissioner of probation, the executive director of the governor's public safety committee, and the police commissioner of the city of Boston, or their designees, all of whom shall serve ex officio, and three other persons to be appointed by the governor for a term of three years one of whom shall represent the Massachusetts district attorneys association, one of whom shall represent the Massachusetts chiefs of police association, and one of whom shall represent the county commissioners and sheriffs association. Upon the expiration of the term of any appointive member his successor shall be appointed in a like manner for a term of three years.

The governor shall designate annually the chairman of the board from among its members. No chairman may be appointed to serve more than two consecutive terms. The chairman shall hold regular meetings, one of which shall be an annual meeting and shall notify all board members of the time and place of all meetings. Special meetings may be called at any time by a majority of the board members and shall be called by the chairman upon written application of eight or more members. Members of the board shall receive no compensation, but shall receive their expenses actually and necessarily incurred in the discharge of their duties.

The board, after receiving the advice and recommendations of its advisory committee, shall, with the approval of two-thirds of the board members or their designees present and voting, promulgate regulations regarding the collection, storage, dissemination and usage of criminal offender record information.

The board shall provide for and exercise control over the installation, operation and maintenance of data processing and data communication systems, hereinafter called the criminal offender record information system. Said system shall be designed to insure the prompt collection, exchange, dissemination and distribution of such criminal offender record information as may be necessary for the efficient administration and operation of criminal justice agencies, and to connect such systems directly or indirectly with similar systems in this or other states. The board shall appoint, subject to section one hundred and sixty-nine, and fix the salary of a director of teleprocessing who shall not be subject to the provisions of chapter thirty-one or of section nine A of chapter thirty. The board may appoint such other employees, including experts and consultants, as it deems necessary to carry out its responsibilities, none of whom shall be subject to the provisions of chapter thirty-one or of section nine A of chapter thirty.

The board shall make an annual report to the governor and file a copy

thereof with the state secretary, the clerk of the house of representatives and the clerk of the senate.

The board is authorized to enter into contracts and agreements with, and accept gifts, grants, contributions, and bequests of funds from, any department, agency, or subdivision of federal, state, county, or municipal government and any individual, foundation, corporation, association, or public authority for the purpose of providing or receiving services, facilities, or staff assistance in connection with its work. Such funds shall be deposited with the state treasurer and may be expended by the board in accordance with the conditions of the gift, grant, contribution, or bequest, without specific appropriation. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

Policies, rules and regulations shall not be adopted by the board until a hearing has been held in the manner provided by section two of chapter thirty A. (Added by 1973, 961, § 1, approved Oct. 29, 1973, effective 90 days thereafter.)

§ 169. Advisory Committee; Powers and Duties; Recommendations and Reports.

There shall be a criminal history system advisory committee of the board, hereinafter called the advisory committee, consisting of the following persons and their designees: the commissioner of the Boston police department, the attorney general, the commissioner of correction, the commissioner of public safety, the commissioner of youth services, the director of teleprocessing of the criminal offender record system, the executive director of the governor's public safety committee, the president of the Massachusetts district attorneys association, the commissioner of probation, the chairman of the parole board, and the chief justices of the district and superior courts. Each agency represented shall be limited to one vote regardless of the number of designees present at the time any votes are taken.

The advisory committee shall elect its own chairman from its membership to serve a term of one year. No chairman may be elected to serve more than two consecutive terms. The advisory committee may appoint an executive secretary, legal counsel and such other employees as it may from time to time deem appropriate to serve, provided, however, that such employees shall not be subject to chapter thirty-one or section nine A of chapter thirty.

The chairman shall hold regular meetings, one of which shall be an annual meeting and shall notify all advisory committee members of the time and place of all meetings. Special meetings shall be called at any time by a majority of the advisory committee members, and shall be called by the chairman upon written application of seven or more members.

The advisory committee shall recommend to the board regulations relating to the collection, storage, dissemination and use of criminal offender record information. The advisory committee shall ensure that communication is maintained among the several prime users. The advisory

committee shall also recommend to the board the director of teleprocessing of the criminal offender record information system.

The advisory committee may coordinate its activities with those of any interstate systems for the exchange of criminal offender record information, may nominate one or more of its members to serve upon the council or committee of any such system and may participate when and as it deems appropriate in any such system's activities and programs.

The advisory committee may conduct such inquiries and investigations as it deems necessary and consistent with its authority. It may request any agency that maintains, receives, or that is eligible to maintain or receive criminal offender records to produce for inspection statistical data, reports and other information concerning the collection, storage, dissemination and usage of criminal offender record information. Each such agency is authorized and directed to provide such data, reports, and other information.

The advisory committee, shall report annually to the board concerning the collection, storage, dissemination and usage of criminal offender record information in the commonwealth. The board may require additional reports as it deems advisable. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

Policies, rules and regulations shall not be adopted by the advisory committee until a hearing has been held in the manner provided by section two of chapter thirty A. (Amended by 1973, 961, § 2, approved Oct. 29, 1973, effective 90 days thereafter.)

Editorial Note—
The 1973 amendment added a paragraph relative to a hearing as a prerequisite to the adoption of policies, rules, and regulations.

§ 170. Security and Privacy Council; Powers and Duties; Reports.

There shall be a security and privacy council, hereinafter called the council, consisting of the chairman and one other member of the advisory committee, chosen by the advisory committee, and seven other members to be appointed by the governor, to include representatives of the general public, state and local government, and one representative of the criminal justice community. Of the seven members initially appointed by the governor, two shall be appointed for a period of one year, two shall be appointed for a period of two years, two shall be appointed for a period of three years, one shall be appointed for a period of four years. Thereafter, each of the appointments shall be for a period of four years. Each member appointed by the governor shall serve until his successor is appointed and has qualified. The chairman of the council shall be elected by and from within the council to serve for a term of two years. The advisory committee shall provide such clerical and other assistance as the council may require. The council shall meet at the call of the governor, its chairman, or any three of its members and shall conduct a continuing study and review and to make recommendations concerning questions of individual privacy and system security in connection with the collection, storage, dissemination, and usage of criminal offender record information. Council members shall receive no compensation for their services on the council but shall receive their expenses necessarily incurred in the performance of official duties.

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The council may conduct such inquiries and investigations as it deems necessary and consistent with its authority. The board, each criminal justice agency in the commonwealth, and each state and local agency having authorized access to criminal offender record information, is authorized and may furnish to the council, upon request made by its chairman, such statistical data, reports, and other information directly related to criminal offender record information as is necessary to carry out the council's functions.

The council shall make an annual report to the governor and file a copy thereof with the state secretary and the clerk of the house of representatives and the clerk of the senate. It may make such additional reports and recommendations as it deems appropriate to carry out its duties.

The council shall appoint one or more of its members to serve upon any similar council or committee connected with any interstate system for the exchange of criminal offender record information, and may participate as it deems appropriate in the activities of any such system. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

Policies, rules and regulations shall not be adopted by the council until a hearing has been held in the manner provided by section two of chapter thirty A. (Amended by 1973, 961, § 3, approved Oct. 29, 1973, effective 90 days thereafter.)

§ 171. Regulations of Board; Continuing Educational Program in Proper Use and Control of Information.

The board shall promulgate regulations *(a)* creating a continuing program of data auditing and verification to assure the accuracy and completeness of criminal offender record information; *(b)* assuring the prompt and complete purging of criminal record information, insofar as such purging is required by any statute or administrative regulation, by the order of any court of competent jurisdiction, or to correct any errors shown to exist in such information; and *(c)* assuring the security of criminal offender record information from unauthorized disclosures at all levels of operation.

The board shall cause to be initiated for employees of all agencies that maintain, receive, or are eligible to maintain or receive criminal offender record information a continuing educational program in the proper use and control of such information. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

§ 172. Accessibility and Dissemination of Information; Listing of Agencies or Individuals Receiving Information.

Criminal offender record information shall be disseminated, whether directly or through any intermediary, only to *(a)* criminal justice agencies and *(b)* such other individuals and agencies as are authorized access to such records by statute.

The board shall certify which agencies and individuals requesting access

to criminal offender record information are authorized such access. The board shall, regarding such agency or individual, make a finding in writing of eligibility or non-eligibility for such access. No such information shall be disseminated to any agency or individual prior to the board's determination of eligibility or, in cases in which the board's decision is appealed, prior to the final judgment of a court of competent jurisdiction that the agency or individual is so eligible.

Each agency holding or receiving criminal offender record information shall maintain, for such period as is found by the board to be appropriate, a listing of the agencies or individuals to which it has released or communicated such information. Such listings, or reasonable samples thereof, may from time to time be reviewed by the board, advisory committee, or council to determine whether any statutory provisions or regulations have been violated.

Dissemination from any agency in this commonwealth of criminal offender record information shall, except for purposes of research programs approved under section one hundred and seventy-three, be permitted only if the inquiry is based upon name, fingerprints or other personal identifying characteristics. The board shall promulgate regulations to prevent dissemination of such information, except in the above situations, where inquiries are based upon categories of offense or data elements other than said characteristics.

Notwithstanding the provisions of this section, access to criminal offender record information on the basis of data elements other than personal identifying characteristics shall be permissible if the criminal justice agency seeking such access has first obtained authorization from the commissioner of probation, or in his absence, a deputy commissioner of probation. Such authorization may be given as a matter of discretion in cases in which it has been shown that such access is imperative for purposes of the criminal justice agency's investigational or other responsibilities and the information sought to be obtained is not reasonably available from any other source or through any other method. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

§ 173. Use of Information for Purposes of Program Research.

The board shall promulgate regulations to govern the use of criminal offender record information for purposes of program research. Such regulations shall require preservation of the anonymity of the individuals to whom such information relates, shall require the completion of nondisclosure agreements by all participants in such programs, and shall impose such additional requirements and conditions as the board finds to be necessary to assure the protection of privacy and security interests.

The board may monitor any such programs to assure their effectiveness.

The board may, if it determines that a program's continuance threatens privacy or security interests, prohibit access on behalf of any such program to criminal offender record information. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

§ 174. Supervision of Participation in Interstate Information Systems by State and Local Agencies.

The board shall supervise the participation by all state and local agencies in any interstate system for the exchange of criminal offender record information, and shall be responsible to assure the consistency of such participation with the terms and purposes of sections one hundred and sixty-eight to section one hundred and seventy-eight, inclusive.

Direct access to any such system shall be limited to such criminal justice agencies as are expressly designated for that purpose by the board. Where any such system employs telecommunications access terminals, the board shall limit the number and placement of such terminals to those for which adequate security measures may be taken and as to which the board may impose appropriate supervisory regulations. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

§ 175. Right of Individual to Inspect and Copy Record Information Concerning Self; Purge, Modification or Supplementation of Record.

Each individual shall have the right to inspect, and if practicable, copy, criminal offender record information which refers to him. If an individual believes such information to be inaccurate or incomplete, he shall request the agency having custody or control of the records to purge, modify or supplement them. If the agency declines to so act, or if the individual believes the agency's decision to be otherwise unsatisfactory, the individual may in writing request review by the council. The council shall, in each case in which it finds prima facie basis for complaint, conduct a hearing at which the individual may appear with counsel, present evidence, and examine and cross-examine witnesses. Written findings shall be issued within sixty days of receipt by the council of the request for review. Failure to issue findings shall be deemed a decision of the council. If the record in question is found to be inaccurate, incomplete or misleading, the council shall recommend to the board that the record be appropriately purged, modified or supplemented by explanatory notation. Notification of the council's recommendation and subsequent orders by the board to delete, amend or supplement the records, shall be disseminated by the board to any individuals or agencies to which the records in question have been communicated, as well as to the individual whose records have been ordered so altered within ten days of receipt of the council's recommendation. Failure of the board to act shall be deemed a decision of the board.

Agencies at which criminal offender records are sought to be inspected shall prescribe reasonable hours and places of inspection, and shall impose such additional restrictions as may be approved by the board, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

§ 176. Appeal by Aggrieved Persons or Agencies.

Any individual or agency aggrieved by any order or decision of the board or adverse recommendation of the council or failure of the council to issue findings may appeal such order, recommendation or decision to the superior court in the county in which he is resident or in which the board issued the order or decision from which the individual or agency appeals. The court shall in each such case conduct a de novo hearing, and may order such relief as it finds to be required by equity. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

§ 177. Actions for Damages or to Restrain Violations of §§ 168 to 175, Inclusive.

Any aggrieved person may institute a civil action in superior court for damages or to restrain any violation of sections one hundred and sixty-eight to one hundred and seventy-five, inclusive. If it is found in any such action that there has occurred a willful violation, the violator shall not be entitled to claim any privilege absolute or qualified, and he shall in addition to any liability for such actual damages as may be shown, be liable for exemplary damages of not less than one hundred and not more than one thousand dollars for each violation, together with costs and reasonable attorneys' fees and disbursements incurred by the person bringing the action. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

§ 178. Penalties.

Any person who willfully requests, obtains or seeks to obtain criminal offender record information under false pretenses, or who willfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with the provisions of sections one hundred and sixty-eight to one hundred and seventy-five, inclusive, or any member, officer, employee or agency of the board, the advisory committee, the council or any participating agency, or any person connected with any authorized research program, who willfully falsifies criminal offender record information, or any records relating thereto, shall for each offense be fined not more than five thousand dollars, or imprisoned in a jail or house of correction for not more than one year, or both. (1972, 805, § 1, approved July 19, 1972, effective 90 days thereafter.)

MOTOR VEHICLE INSURANCE MERIT RATING BOARD

§ 183. Motor Vehicle Insurance Merit Rating Board.

There shall be within the registry of motor vehicles a motor vehicle insurance merit rating board, hereinafter called the board. The board shall consist of the registrar of motor vehicles, who shall serve as chairman, the commissioner of insurance and the attorney general or his designee. The board shall appoint a director, who shall not be subject to the provisions of chapter thirty-one. The board shall formulate and administer a plan for the compiling, gathering and disseminating of information, operator records and histories, and such other data as it deems necessary or appropriate pertaining to motor vehicle accidents, claims under motor vehicle policies and motor vehicle violations in order to facilitate the implementation and continued operation of merit rating with respect to motor vehicle insurance as provided in section one hundred and thirteen P of chapter one hundred and seventy-five.

Such plan shall include a system for the gathering and maintaining of the aforementioned information, operator records and histories, and other data and for the prompt and efficient dissemination of such to insurance companies making inquiry with respect to the motor vehicle accident, motor vehicle insurance claim and motor vehicle violation record of any owner or operator insured by or applying for insurance from any such insurer. Such records and data disseminated by such plan shall be used exclusively for the purposes of merit rating under the provisions of section one hundred and thirteen P of chapter one hundred and seventy-five. Whoever disseminates or uses records or data disseminated under such plan contrary to the provisions of this section shall be punished by a fine of not more than one thousand dollars for each offense or by imprisonment for not more than one year, or both.

The board shall have access to criminal offender record information for the purpose of developing the plan. The criminal history systems board shall certify the board and each insurance company doing motor vehicle insurance business within the commonwealth for access to criminal offender record information pertaining to violations of chapter ninety by its insureds; provided, however, that the board and each such company shall comply with the regulations of the criminal history systems board and be subject to the provisions of sections one hundred and seventy-two to one hundred and seventy-eight, inclusive.

The board may expend for expenses and for legal, investigative, clerical and other assistance such sums as may be appropriated therefor; provided, however, that all costs of administration and operation of said board shall be borne by insurance companies doing motor vehicle insurance business within the commonwealth. The commissioner of insurance shall apportion such costs among all such companies and shall assess them for the same on a fair and reasonable basis. (Added by 1976, 266, § 1, approved August 4, 1976; by § 23, effective upon passage; effective by act of Governor August 4, 1976.)

§ 10. Records Open for Public Inspection.

(a) Every person having custody of any public records, as defined in clause twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit them to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof on payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search.

(b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.

(c) In any court proceeding pursuant to paragraph *(b)* there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificty the exemption which applies. (Amended by 1973, 1050, § 3, approved Nov. 16, 1973; by § 7 it takes effect on July 1, 1974; 1976, 438, § 2, approved October 19, 1976, effective 90 days thereafter.)

Editorial Note—

The 1973 amendment rewrote this section; subdivision *(a)* is the former section with changes; subdivisions *(b)* and *(c)* are new.

The 1976 amendment rewrote paragraph (b) to provide an administrative remedy for obtaining copies of public records.

References—

Inspection of public records. 66 Am Jur 2d, RECORDS AND RECORDING LAWS §§ 12 et seq.

CHAPTER 66A

Fair Information Practices

§ 1. Definitions.

As used in this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:—

"Agency", the commonwealth or any of its departments, authorities established by the general court to serve a public purpose having either state-wide or local jurisdiction, boards, and commissions or other public or quasi-public entities.

"Automated personal data system", a personal data system in which personal data is stored, in whole or part, in a computer or in electronically controlled or accessible files.

"Computer accessible", recorded or magnetic tape, magnetic film, magnetic disc, magnetic drum, punched card, or optically scannable paper or film.

"Criminal justice agency", a court with criminal jurisdiction or a juvenile court; an agency at any level of government which performs as its principal function activity relating to (a) the apprehension, prosecution, defense, adjudication, incarceration, or rehabilitation of criminal offenders; or (b) the collection, storage, dissemination, or usage of criminal offender record information.

"Data subject", an individual whose name or identity is added to or maintained in a personal data system.

"Holder", an agency which maintains personal data or any facility which contracts with such agency to hold personal data.

"Manual personal data system", a personal data system which is not an automated or other electronically accessible or controlled personal data system.

"Personal data", any information concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular individual.

"Personal data system", a collection of records containing personal data except criminal offender record information as defined in section one hundred and sixty-seven of chapter six. (Added by 1975, 776, § 1, approved December 17, 1975; by § 5, effective July 1, 1976; amended by 1976, 249, § 1, approved, with emergency preamble, July 16, 1976.)

§ 2. Accountability for and Protection of Records Containing Personal Data.

Every agency maintaining a personal data system shall:—

(a) identify one individual immediately responsible for the personal data system who shall insure that the requirements of this chapter for preventing access to or dissemination of personal data are followed;

(b) inform each of its employees having any responsibility or function in the design, development, operation, or maintenance of the personal data system, or the use of any personal data contained therein, of each safeguard required by this chapter, of each rule and regulation promulgated pursuant to section three which pertains to the operation of the personal data system, and of the civil remedies described in section three B of chapter two hundred and fourteen available to individuals whose rights under chapter sixty-six A are allegedly violated;

(c) not allow any other agency or individual not employed by the holding agency to have access to personal data unless such access is authorized by statute or regulation, or is approved by the holding agency and by the data subject whose personal data is sought. Medical or psychiatric data may be made available to a physician treating a data subject, upon the request of said physician, if a medical or psychiatric

emergency arises which precludes the data subject's giving approval for the release of such data; provided, however, that the data subject shall be given notice of such access upon termination of the emergency;

(d) take reasonable precautions to protect personal data from dangers of fire, theft, flood, natural disaster, or other physical threat;

(e) comply with the notice requirements set forth in section sixty-three of chapter thirty;

(f) in the case of automated personal data systems, and to the maximum extent feasible with manual personal data systems, maintain a complete and accurate record of every access to and every use of any personal data in any personal data system, including the identity of all persons and organizations who have gained access to personal data and their intended use of such data;

(g) to the extent that such material is maintained pursuant to this section, make available to a data subject upon his request in a form comprehensible to him, a list of the uses made of his personal data, including the identity of all persons and organizations which have gained access to the data;

(h) maintain personal data with such accuracy, completeness, timeliness, pertinence and relevance as is necessary to assure fair determination of a data subject's qualifications, character, rights, opportunities, or benefits when such determinations are based upon such data;

(i) inform in writing an individual, upon his request, whether he is a data subject in the personal data system, and, if so, make such data fully available to him, upon his request, in a form comprehensible to him, unless doing so is prohibited by statute;

(j) establish procedures that (1) allow each data subject or his duly authorized representative to contest the accuracy, completeness, pertinence, timeliness, relevance or dissemination of his personal data or the denial of access to such data maintained in the personal data system and (2) permit personal data to be corrected or amended when the data subject or his duly authorized representative so requests and there is no disagreement concerning the change to be made or, when there is disagreement with the data subject as to whether a change should be made, assure that the data subject's claim is noted and included as part of the data subject's personal data and included in any subsequent disclosure or dissemination of the disputed data;

[Another clause (j) is added:]

(j) Provide lists of names and addresses of applicants for professional licenses and lists of professional licensees to associations or educational organizations recognized by the appropriate professional licensing or examination board. (Added by 1976, 249, § 2, approved, with emergency preamble, July 16, 1976.)

(k) maintain procedures to ensure that no personal data are made available from its personal data systems in response to a demand for data made by means of compulsory legal process, unless the data subject has been notified of such demand in reasonable time that he may seek to have the process quashed. (Added by 1975, 776, § 1, approved December 17, 1975; by § 5, effective July 1, 1976; amended by 1976, 249, § 2, approved, with emergency preamble, July 16, 1976.)

§ 3. Rules and Regulations.

The secretary of each executive office shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to all agencies, departments, boards, commissions, authorities, and instrumentalities within each of said executive offices subject to the approval of the commissioner of administration. The department of community affairs shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to local housing and redevelopment authorities of the cities and towns. (Added by 1975, 776, § 1, approved December 17, 1975; by § 5, effective July 1, 1976.)

Notwithstanding any other penalty provision of this section, any person who is convicted for the first time under this section for the possession of marihuana or a controlled substance in Class E and who has not previously been convicted of any offense pursuant to the provisions of this chapter, or any provision of prior law relating to narcotic drugs or harmful drugs as defined in said prior law shall be placed on probation unless such person does not consent thereto, or unless the court files a written memorandum stating the reasons for not so doing. Upon successful completion of said probation, the case shall be dismissed and records shall be sealed. (Amended by 1975, 369, approved June 21, 1975, effective 90 days thereafter.)

127 § 23. Identification of prisoners

The officer in charge of a penal institution to which a person is committed under a sentence of imprisonment for any crime shall, unless the court otherwise orders, take or cause to be taken his name, age, height, weight, photograph and general description and copies of his finger prints in accordance with the finger print system of identification of criminals. The court may order to be taken the photograph and the aforesaid description and finger prints of a person convicted of a felony who is not committed to a penal institution. All such photographs and identifying ma[illegible] shall be transmitted forthwith to the commissioner of public safety.

Amended by St.1941, c. 69.

§ 25. Fugitives from justice

Whenever the officer in charge of a prison, lockup or other place of detention has received a request from any authority, either by circular or otherwise, to assist in the apprehension of a fugitive from justice, such officer may take an exact description of any person committed to such prison or held in such lockup or other place of detention, and may include in such descriptions copies of the finger prints in accordance with the finger print system of identification. But said officer shall not take a description of a person who, he has reason to believe, is not a fugitive from justice. All descriptions so made shall be forthwith transmitted to the office of the commissioner of public safety.

§ 27. Forwarding of criminal history by district attorney

The district attorney who prosecuted such prisoners as are described in section twenty-three shall forward to the department of correction the criminal history of each prisoner as shown upon the trial, upon blanks to be furnished by the commissioner of public safety.

Amended by St.1955, c. 770, § 22.

§ 34. Unauthorized Possession; Penalties; Dismissal and Sealing of Record in Certain Cases of First Offense.

No person knowingly or intentionally shall possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the provisions of this chapter. Except as hereinafter provided, any person who violates this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. Any person who violates this section by possessing heroin shall for the first offense be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both, and for a second or subsequent offense shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years or by a fine of not more than five thousand dollars and imprisonment in a jail or house of correction for not more than two and one-half years. Any person who violates this section by possession of marihuana or a controlled substance in Class E of section thirty-one shall be punished by imprisonment in a house of correction for not more than six months or a fine of five hundred dollars, or both. Except for an offense involving a controlled substance in Class E of section thirty-one, whoever violates the provisions of this section after one or more convictions of a violation of this section or of a felony under any other provisions of this chapter, or of a corresponding provision of earlier law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both.

If any person who is charged with a violation of this section has not previously been convicted of a violation of any provision of this chapter or other provision of prior law relative to narcotic drugs or harmful drugs as defined in said prior law, or of a felony under the laws of any state or of the United States relating to such drugs, has had his case continued without a finding to a certain date, or has been convicted and placed on probation, and if, during the period of said continuance or of said probation, such person does not violate any of the conditions of said continuance or said probation, then upon the expiration of such period the court may dismiss the proceedings against him, and may order sealed all official records relating to his arrest, indictment, conviction, probation, continuance or discharge pursuant to this section; provided, however, that departmental records which are not public records, maintained by police and other law enforcement agencies, shall not be sealed; and provided further, that such a record shall be maintained in a separate file by the department of probation solely for the purpose of use by the courts in determining whether or not in subsequent proceedings such person qualifies under this section. The record maintained by the department of probation shall contain only identifying information concerning the person and a statement that he has had his record sealed pursuant to the provisions of this section. Any conviction, the record of which has been sealed under this section, shall not be deemed a conviction for purposes of any disqualification or for any other purpose. No person as to whom such sealing has been ordered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment, conviction, dismissal, continuance, sealing, or any other related court proceeding, in response to any inquiry made of him for any purpose.

The superintendents of the correctional institutions of the commonwealth and the keepers of jails and houses of correction shall keep a record of the descriptions and fingerprints taken under section twenty-three and of the criminal history of prisoners so described and fingerprinted, as shown by the records of the courts of the commonwealth, or of any other state, or by any other official records which are accessible, and shall attach to the record a photograph of such prisoner or file such photograph in such manner as to be readily found. Systems operated by the criminal history systems board, pursuant to sections one hundred and sixty-six through one hundred and seventy-seven,[1] inclusive, of chapter six, may be used for such recordkeeping purposes provided that such records remain subject to the regulations of said board.

Amended by St.1955, c. 770, § 23; St.1957, c. 777, § 10; St.1972, c. 805, § 4.

§ 29. Publication of records; exhibition of records

The record required by the preceding section shall not be published except so far as may be necessary for the identification of persons convicted of larceny or any felony after their release from prison; but the officer in charge of a prison shall exhibit the record to any person upon the order of a justice of the superior court or of a district attorney. A copy of the descriptions including copies of finger prints, photographs and criminal histories shall upon request be furnished by the officer in charge of any prison to the commissioner of public safety or to the principal officer of a prison in any other state which requires by law the finger printing and description of convicts and has provided for furnishing information concerning criminals to other states. However, publication of any records required by section twenty-eight which are kept on systems operated by the criminal history systems board shall be in accordance with the regulations of said board.

Amended by St.1972, c. 805, § 5.

§ 131A. Notice to state and local police of terms and conditions of parole permits

Not less than twenty-four hours prior to the effective date of any parole permit the parole board shall notify in writing the division of state police in the department of public safety and the police department in the city or town to which the parolee will return of such parole, specifying the terms and conditions thereof.

Added by St.1965, c. 887.

§ 135. Furnishing information to parole board; filing information; statement; contents; availability; duty of clerk of court and probation officer

The commissioner or the jailer, master or keeper of a jail or house of correction shall furnish to the parole board all information in his possession relating to any prisoner whose care is under consideration. As each prisoner is received in the correctional institutions of the commonwealth or in the jails or houses of correction, it shall be the duty of the commissioner of correction or of the jailer, master or keeper, while the case is still recent, to cause to be obtained and filed information as complete as may be obtainable at that time with regard to such prisoner. Such information shall include a complete statement of the crime for which he is then sentenced, the circumstances of such crime, the nature of his sentence, the court in which he was sentenced, the name of the judge and district attorney, and copies of such probation reports as may have been made, as well as reports as to the prisoner's social, physical, mental and psychiatric condition and history. It shall be the duty of the clerk of the court and of all probation officers and other appropriate officials to send such information as may be in their possession or under their control to the commissioner or the jailer, master or keeper of a jail or house of correction, upon request. The commissioner or the jailer, master or keeper of a jail or house of correction shall also at that time obtain and file a copy of the complete criminal record of such prisoner, so far as reasonably available, including any juvenile court record that may exist. When all such existing available records have been assembled, they shall be made available to the parole board so as to be readily accessible when the parole or pardon of such prisoner is being considered.

Added by St.1941, c. 690, § 2. Amended by St.1954, c. 567, § 6; St.1960, c. 765, § 6.

§ 1A. Fingerprinting and Photographing of Persons Arrested for Commission of Felony.

Whoever is arrested by virtue of process, or is taken into custody by an officer, and charged with the commission of a felony shall be fingerprinted, according to the system of the bureau of identification in the department of public safety, and may be photographed. Two copies of such fingerprints and photographs shall be forwarded within a reasonable time to the commissioner of public safety by the person in charge of the police department taking such fingerprints and photographs. (Amended by 1972, 217, approved April 27, 1972, effective 90 days thereafter.)

§ 100. Detailed Reports to Be Made of the Probation Work, etc.; Records; Accessibility of Information.

Every probation officer, or the chief or senior probation officer of a court having more than one probation officer, shall transmit to the commissioner of probation, in such form and at such times as he shall require, detailed reports regarding the work of probation in the court, and the commissioner of correction, the penal institutions commissioner of Boston and the county commissioners of counties other than Suffolk shall transmit to the commissioner, as aforesaid, detailed and complete records relative to all paroles and permits to be at liberty granted or issued by them, respectively, to the revoking of the same and to the length of time served on each sentence to imprisonment by each prisoner so released specifying the institution where each such sentence was served; and under the direction of the commissioner a record shall be kept of all such cases as the commissioner may require for the information of the justices and probation officers. Police officials shall co-operate with the commissioner and the probation officers in obtaining and reporting information concerning persons on probation. The information so obtained and recorded shall not be regarded as public records and shall not be open for public inspection but shall be accessible to the justices and probation officers of the courts, to the police commissioner for the city of Boston, to all chiefs of police and city marshals, and to such departments of the state and local governments as the commissioner may determine. Upon payment of a fee of three dollars for each search, such records shall be accessible to such departments of the federal government and to such educational and charitable corporations and institutions as the commissioner may determine. The commissioner of correction and the department of youth services shall at all times give to the commissioner and the probation officers such information as may be obtained from the records concerning prisoners under sentence or who have been released. The commissioner may use systems operated by the criminal history systems board, pursuant to sections one hundred sixty-seven to one hundred seventy-eight, inclusive, of chapter six, for any record-keeping lawfully required by him provided that such records remain subject to the regulations of said board. (Amended by 1969, 838, § 63, approved, with emergency preamble, August 28, 1969; by § 74 it takes effect on Oct. 1, 1969, or upon the qualification of the commissioner of youth services appointed under the provisions of § 1 of chapter 18A of the General Laws, whichever is the later; 1972, 805, § 8, approved July 19, 1972, effective 90 days thereafter; 1975, 534, approved August 21, 1975, effective 90 days thereafter.)

§ 100A. Sealing of Certain Criminal Record Files by Commissioner of Probation; Conditions; Exceptions; Effect.

Any person having a record of criminal court appearances and dispositions in the commonwealth on file with the office of the commissioner of probation may, on a form furnished by the commissioner and signed under the penalties of perjury, request that the commissioner seal such file. The commissioner shall comply with such request provided (1) that said person's court appearance and court disposition records, including termination of court supervision, probation or sentence for any misdemeanor occurred not less than ten years prior to said request; (2) that said person's court appearance and court disposition records, including termination of court supervision, probation or sentence for any felony occurred not less than fifteen years prior to said request; (3) that said person had not been found guilty of any criminal offense within the commonwealth in the ten years preceding such request, except motor vehicle offenses in which the penalty

does not exceed a fine of fifty dollars; (4) said form includes a statement by the petitioner that he has not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses, as aforesaid, and has not been imprisoned in any state or county within the preceding ten years; and (5) said person's record does not include convictions of offenses other than those to which this section applies. This section shall apply to court appearances and dispositions of all offenses provided, however, that this section shall not apply in case of convictions for violations of sections one hundred and twenty-one to one hundred and thirty-one H, inclusive, of chapter one hundred and forty or for violations of chapter two hundred and sixty-eight or chapter two hundred and sixty-eight A.

In carrying out the provisions of this section, notwithstanding any laws to the contrary:

1. Any recorded offense which was a felony when committed and has since become a misdemeanor shall be treated as a misdemeanor.

2. Any recorded offense which is no longer a crime shall be eligible for sealing forthwith, except in cases where the elements of the offense continue to be a crime under a different designation.

3. In determining the period for eligibility, any subsequently recorded offenses for which the dispositions are "not guilty", "dismissed for want of prosecution", "dismissed at request of complainant", "nol prossed", or "no bill" shall be held to interrupt the running of the required period for eligibility.

4. If it cannot be ascertained that a recorded offense was a felony when committed said offense shall be treated as a misdemeanor.

When records of criminal appearances and criminal dispositions are sealed by the commissioner in his files, he shall notify forthwith the clerk and the probation officer of the courts in which the convictions or dispositions have occurred, or other entries have been made, of such sealing, and said clerks and probation officers likewise shall seal records of the same proceedings in their files.

Such sealed records shall not operate to disqualify a person in any examination, appointment or application for public service in the service of the commonwealth or of any political subdivision thereof; nor shall such sealed records be admissible in evidence or used in any way in any court proceedings or hearings before any boards or commissions, except in imposing sentence in subsequent criminal proceedings.

An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include the following statement: "An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' to an inquiry herein relative to prior arrests or criminal court appearances. In addition, any applicant for employment may answer 'no record' with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution." The attorney general may enforce the provisions of this paragraph by a suit in equity commenced in the superior court.

The commissioner, in response to inquiries by authorized persons other

than any law enforcement agency, any court, or any appointing authority, shall in the case of a sealed record or in the case of court appearances and adjudications in a case of delinquency or the case of a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution, report that no record exists. (Added by 1971, 686, § 1, approved August 19, 1971; by § 2 it takes effect July 1, 1972; amended by 1973, 533, §§ 2, 3, approved July 10, 1973, effective 90 days thereafter; 1973, 1102, approved Nov. 28, 1973, effective 90 days thereafter; 1974, 525, approved July 11, 1974, effective 90 days thereafter; 1975, 278, approved June 2, 1975, effective 90 days thereafter.)

§ 100B. Sealing of Certain Juvenile Record Files; Conditions; Effect.

Any person having a record of entries of a delinquency court appearance in the commonwealth on file in the office of the commissioner of probation may, on a form furnished by the commissioner, signed under the penalties of perjury, request that the commissioner seal such file. The commissioner shall comply with such request provided (1) that any court appearance or disposition including court supervision, probation, commitment or parole, the records for which are to be sealed, terminated not less than three years prior to said request; (2) that said person has not been adjudicated a delinquent or found guilty of any criminal offense within the commonwealth in the three years preceding such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars nor been imprisoned under sentence or committed as a delinquent within the commonwealth within the preceding three years; and (3) said form includes a statement by the petitioner that he has not been adjudicated delinquent or found guilty of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and has not been imprisoned under sentence or committed as a delinquent in any state or county within the preceding three years.

When records of delinquency appearances and delinquency dispositions are sealed by the commissioner in his files, the commissioner shall notify forthwith the clerk and the probation officer of the courts in which the adjudications or dispositions have occurred, or other entries have been made, and the department of youth services of such sealing, and said clerks, probation officers, and department of youth services likewise shall seal records of the same proceedings in their files.

Such sealed records of a person shall not operate to disqualify a person in any future examination, appointment or application for public service under the government of the commonwealth or of any political subdivision thereof; nor shall such sealed records be admissible in evidence or used in any way in any court proceedings or hearings before any boards of commissioners, except in imposing sentence for subsequent offenses in delinquency or criminal proceedings.

Notwithstanding any other provision to the contrary, the commissioner shall report such sealed delinquency record to inquiring police and court agencies only as "sealed delinquency record over three years old" and to other authorized persons who may inquire as "no record". The information contained in said sealed delinquency record shall be made available to a judge or probation officer who affirms that such person, whose record has been sealed, has been adjudicated a delinquent or has pleaded guilty or has been found guilty of and is awaiting sentence for a crime committed subsequent to sealing of such record. Said information shall be used only for the purpose of consideration in imposing sentence. (Added by 1972, 404, approved June 8, 1972, effective 90 days thereafter.)

§ 100C. Sealing of Certain Criminal Records; Effect.

In any criminal case wherein the defendant has been found not guilty by the court or jury, or a no bill has been returned by the grand jury, or a finding of no probable cause has been made by the court, the defendant may, on a form furnished by the commissioner of probation, request that the commissioner seal said court appearance and disposition recorded in his files. The commissioner shall comply with such request and he shall notify forthwith the clerk and the probation officers of the courts in which the proceedings occurred or were initiated who shall likewise seal the records of the proceedings in their files.

In any criminal case wherein a nolle prosequi has been entered, or a dismissal has been entered by the court, except in cases in which an order of probation has been terminated, and it appears to the court that substantial justice would best be served, the court shall direct the clerk to seal the records of the proceedings in his files. The clerk shall forthwith notify the commissioner of probation and the probation officer of the courts in which the proceedings occurred or were initiated who shall likewise seal the records of the proceedings in their files.

Such sealed records shall not operate to disqualify a person in any examination, appointment or application for public employment in the service of the commonwealth or of any political subdivision thereof.

An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include in addition to the statement required under section one hundred A the following statement: "An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' with respect to an inquiry herein relative to prior arrests or criminal court appearances." The attorney general may enforce the provisions of this section by a suit in equity commenced in the superior court.

The commissioner, in response to inquiries by authorized persons other than any law enforcement agency or any court, shall in the case of a sealed record report that no record exists. After a finding or verdict of guilty on a subsequent offense such sealed record shall be made available to the probation officer and the same, with the exception of a not guilty, a no bill, or a no probable cause, shall be made available to the court. (Added by 1973, 322, § 1, approved May 29, 1973, effective 90 days thereafter.)

2.25 Confirmation of Statements Regarding the Offender Status of an Individual at the Request of Members of the Public

A criminal justice agency may, at the request of members of the public, confirm statements regarding the offender status of an individual where the request for confirmation is by the individual's name and indicates a specific knowledge that the individual is a criminal offender, or alleged criminal offender, at a given stage of the criminal justice process.

"Offender status" means factual information pertaining to an individual's (a) present physical location in a criminal justice facility; (b) present participation in rehabilitative and educational programs; or (c) present residential standing such as furlough, parole, probation or the like.

2.26 Disclosure of an Individual's Offender Status Where Necessary for Furthering the Rehabilitative or Health Needs of the Individual

Nothing in these regulations shall prevent a criminal justice agency from disclosing, with the informed consent of the individua information concerning his offender status or his physical or mental status (a) to parties furthering the rehabilitation or health of such individual, where such disclosures are necessary to facilitate his rehabilitation or health, or (b) to members of an individual's immediate family. Where the individual is physically unable to give his informed consent, such consent shall not be required.

I hereby certify under the penalties of perjury that the above drafted document sets forth Regulations 2.25 and 2.26 as approved by the Criminal History Systems Board on January 29, 1976.

RECEIVED
FEB 20 1976
SECRETARY'S OFFICE

FRANCIS X. BELLOTTI
Chairman
Criminal History Systems Board

Boston, Ma.
Suffolk County

February 20, 1976

Then personally appeared before me the above named Francis X. Bellotti and made oath the above is his free act and deed.

Notary Public
My Commission Expires June 20,198

3.4 Copies of Records and Documents Indicating the Absence of a Record

(a) An individual shall have a right to receive, if practicable, a computer print-out or a photocopy of CORI, including personal identifiers, referring to him.

(b) If no CORI referring to the requesting individual can be found in the criminal justice agency's files, then such agency shall disclose this fact to the individual and, if practicable, provide him with a computer print-out or written documentation which refers to him by name and address, and indicates that he has no record.

(c) In order for any individual other than the individual named in the CORI to inspect and/or copy CORI under this section, all requirements of Regulation 3.6 must be met.

(d) An agency holding CORI may impose a reasonable charge for copying services, not to exceed its normal charges to the public for such services, or the cost of such copying, whichever is less.

(e) Where neither a computer print-out nor a photocopy is available, the reviewing individual may make a written summary or notes of the CORI reviewed and he may take with him such summary or notes.

I hereby certify under the penalties of perjury that the above drafted document sets forth Emergency Regulation 3.4 as approved by the Criminal History Systems Board on May 27, 1976.

FRANCIS X. BELLOTTI
Chairman
Criminal History Systems Board

Boston, Ma.
Suffolk County

Then personally appeared before me the above named Francis X. Bellotti and made oath the above is his free act and deed.

Notary Public
My Commission Expires June 20, 1980

3.6 Third parties who may be authorized to inspect and copy CORI

(a) Each of the parties specified in part (b) of this regulation shall be permitted to inspect and copy CORI pertaining to another individual in accordance with the requirements of Regulation 3.4 where the individual named in the CORI (hereinafter referred to as "the individual") has given his informed written authorization for such access, and the party so authorized satisfactorily identifies himself.

(b) Each of the following designated parties shall be permitted to inspect and copy CORI pertaining to another individual pursuant to this section:

(i) the attorney of the individual;

(ii) any authorized agent of the individual's attorney who is also an attorney;

(iii) a law student or legal paraprofessional who (A) is a legal representative of the individual working under the general supervision of the individual's attorney, and (B) presents a written authorization from the individual's attorney indicating his assumption of responsibility for the actions of such law students and legal paraprofessionals on a form approved by the CHSB for this purpose;

(iv) any other agent authorized by the individual for the sole purpose of disseminating the CORI to the individual where inspection and copying by the individual himself would cause undue burden, and such agent states in writing under the penalties of perjury on a CHSB form whether he or she is being paid to inspect and/or copy the CORI, and if so, by whom he or she is being paid.

(c) Each of the parties otherwise qualified for access to CORI pertaining to another individual under parts (b)(iii) and (b)(iv) of this regulation who are either presently a correctional inmate or a parolee; or has been a correctional inmate or a parolee within the last five years shall not be permitted access to CORI under this regulation unless the agency holding the CORI approves of such access.

(d) Each of the parties authorized access to CORI pursuant to this regulation shall, by use of a form approved for this purpose by the CHSB, swear or affirm in writing under the penalties of perjury that:

(i) he has been authorized access to CORI pertaining to another individual without duress on the individual;

(ii) he will inspect and/or copy CORI pertaining to another individual only to provide legal representation for the individual, or to disseminate the CORI to the individual himself; and

(iii) he shall not use, store, maintain or, except to the individual, disseminate any CORI obtained pursuant to this regulation unless he is the legal representative of the individual under parts (b)(i), (b)(ii) or (b)(iii) of this regulation.

The CHSB form referred to herein must be presented to the criminal justice agency holding the CORI before inspection or copying can be permitted.

(e) All forms, authorizations, statements and the like required by this regulation shall be maintained by the agency holding the CORI and be subject to inspection by the CHSB and the Security and Privacy Council. The Security and Privacy Council shall examine these items, or a random sample thereof, at least on an annual basis from the date this regulation goes into effect.

I hereby certify under the penalties of perjury that the above drafted document sets forth the amendment to Regulation 3.6 approved by the Criminal History Systems Board on August 7, 1975.

Francis X. Bellotti
Chairman
Criminal History Systems Board

Suffolk, SS:
Boston, Massachusetts August 13, 1975

Then personally appeared before me the above named Francis X. Bellotti and made oath the foregoing was his free act and deed.

Notary Public
My Commission Expires June 20, 1980

Criminal History Systems Board
Pursuant to M.G.L. Chapter 6 Sections 168 and 171
on December 3, 1974

1.1 Records and data included in CORI

(a) "Criminal offender record information" (CORI) means records and data compiled by criminal justice agencies for the purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation and release. Such information shall be restricted to that recorded as the result of the initiation of criminal proceedings or of any consequent proceedings related thereto. It shall not include intelligence, analytical and investigative reports and files, nor statistical records and reports in which individuals are not identified and from which their identities are not ascertainable.

(b) CORI is limited to records and data in abstract or line entry form which set forth the fact and results of an individual's movement through any one or more of the formal stages of the criminal justice process from the initiation of criminal proceedings through pretrial proceedings, prosecution, adjudication, correctional treatment, release and any consequent or related criminal justice proceedings. CORI shall be limited to factual statements about the occurrence and outcome of an arrest, indictment, warrant, arraignment, bail, continuance, default, trial, appeal, disposition, sentence, probation, commitment, parole, commutation, release, termination or revocation of probation or parole, pardon or similar occurrences and outcomes.

1.2 Applicability of regulations

These regulations shall control the content, access to, and dissemination of CORI in automated systems. These regulations shall control only the access to and dissemination of CORI in manual systems, but shall control the content of such manual systems with regard to any action taken under Regulations 3.9 and 3.10.

1.3 Public records data

CORI shall not include public records and data subject to disclosure under public record statutes, orders, or regulations if such records and data are limited to information concerning a single criminal justice proceeding within one criminal justice agency and contain no CORI relating to any other criminal justice agency.

1.4 Statistical records and reports

CORI shall not include statistical records and reports in which individuals are not identified and from which their identities are not ascertainable.

1.5 Exclusion of juvenile data

CORI shall include information concerning a person who is under the age of seventeen years if and only if that person is both adjudicated and receives a disposition as an adult.

1.6 Inclusion of photographs and fingerprints

In addition to other records and data, CORI shall include fingerprints, photographs, and similar identifying information and documents recorded as the result of the initiation of a criminal proceeding or any consequent proceedings provided, however, that CORI shall not include photographs of an individual used for investigative purposes if the individual is not identified by name.

1.7 Initiation of criminal proceedings

CORI shall be restricted to that information recorded as a result of the initiation of criminal proceedings or any consequent proceedings. "Initiation of criminal proceedings" means issuance of an arrest warrant, the arrest of an individual, issuance of a summons, indictment by a grand jury or issuance of a court complaint.

1.8 Exclusion of intelligence, investigative and analytical reports, files and data

(a) CORI shall not include intelligence, analytical and investigative reports or files such as police or prosecution initiated surveillance reports, informant reports, field interview information, field interrogation and observation reports and similar reports and files.

(b) CORI shall not include wanted posters and public announcements, photographs and other identifying data, concerning escapees or other wanted persons.

1.9 Content of converted files

No CORI concerning juveniles, juvenile offenses or acts of delinquency, minor motor vehicle offenses, or acts which are no longer criminal offenses, shall be converted from manual to computerized form for inclusion in the automated criminal offender record information system provided, however, that information relating to proceedings in which a juvenile both is adjudicated and receives a disposition as an adult shall be so converted. "Minor motor vehicle offenses" means those offenses not punishable by incarceration.

1.10 Triggering of file conversion

(a) Except as otherwise provided in these regulations, no CORI respecting any individual shall be converted from manual to computerized form for inclusion in the automated criminal offender

record information system unless:

(i) such individual is presented in court and the Office of the Commissioner of Probation receives a current daily court slip concerning presentation in court on any charges other than a minor motor vehicle offense;

(ii) such individual has attained at least the age of seventeen years;

(iii) such individual has a prior conviction for a non-juvenile offense; and

(iv) there is either:

(A) on file in the Department of Public Safety with respect to such individual a fingerprint card relating to a criminal arrest; or

(B) a sufficient match by name, date of birth, father and mother's last name, address and social security or other identifying number to ensure that the accused person and the person about whom the file is maintained are the same person, and there is full compliance with Regulation 1.13.

(b) If an individual to whom CORI refers, including a juvenile who is both adjudicated and receives a disposition as an adult, is convicted of a felony as the result of a current court appearance, then CORI concerning such individual shall be converted if such individual meets all of the conversion criteria except those in Regulations 1.10 (a) (ii) and 1.10 (a) (iii) above concerning age and prior conviction for a non-juvenile offense.

1.11 Conversion and removal of arrest entries without court activity data

(a) CORI pertaining to an arrest which resulted in a non-guilty disposition as set forth in Regulation 1.14 shall not be converted from manual to computerized form pursuant to the Criminal History Record Conversion Project for inclusion in the automated CORI system.

(b) CORI pertaining to an arrest which resulted in a non-guilty disposition as set forth in Regulation 1.14 shall be removed from the automated CORI system.

1.12 Inclusion of appellate court proceeding data

CORI relating to appellate court proceedings shall be entered and maintained on the automated CORI system except as provided otherwise in these regulations.

1.13 Requirement of stringent identification standards

The director of teleprocessing shall, with the approval of the Criminal History Systems Board (CHSB) adopt procedures which will ensure there is sufficient data established for identification to produce a high degree of certainty that CORI maintained in the automated system is that of a specific individual.

1.14 Nonguilty dispositions

Nonguilty dispositions shall include any criminal proceeding in which the defendant has been found not guilty by the court or jury, or a no bill has been returned by the grand jury, or a finding of no probable cause has been made by the court, or a conviction has been reversed on appeal, or an arrest has not been followed by subsequent court activity within seven days unless the director of teleprocessing is informed by the appropriate law enforcement agency that such court activity has been prevented for medical reasons or escape of the individual.

1.15 Restriction of certain records

All CORI with respect to any criminal proceedings in which a nolle prosequi or dismissal has been entered, or the court has ordered the sealing of the records of such proceeding, shall be included in the automated CORI system provided, however, that such CORI shall not be maintained for on-line computer access nor shall it be disseminated from such system to any individual or agency except as provided in Regulation 1.18 (a), (b), (c), (f), or (g). With respect to CORI restricted in accordance with this regulation, the CHSB shall respond "no record" to inquiries from all agencies and individuals.

1.16 Removal of certain CORI from the automated CORI system

Except as provided in these regulations, all CORI with respect to active and/or pending criminal proceedings shall be included in automated CORI systems. CORI with respect to any criminal proceeding for which the individual receives a nonguilty disposition as defined in Regulation 1.14 shall be removed from the automated CORI system.

1.17 Restriction of CORI regarding inactive felons and misdemeanants

(a) CORI relating to an offense which would in this state be deemed a felony shall be removed from on-line storage and access and placed in an off-line mode in the automated CORI system, if (i) a period of seven years has elapsed from the date of court

appearances and dispositions relating to the particular offense, including termination of court supervision, probation, parole, sentence or incarceration and (ii) the individual convicted of the particular offense has not been convicted of any criminal offense for the preceding seven year period except minor motor vehicle offenses.

(b) CORI relating to an offense which would in this state be deemed a misdemeanor and where the individual convicted of this particular offense has never been convicted of an offense which would in this state be deemed a felony, except a felony directed to be placed off-line by paragraph (a) above, shall be removed from on-line storage and access and placed in an off-line mode in the automated CORI system, if (i) a period of five years has elapsed from the date of court appearances and dispositions relating to the particular offense, including termination of court supervision, probation, parole, sentence or incarceration; and (ii) the individual convicted of the particular offense has not been convicted of any criminal offense for the preceding five year period except minor motor vehicle offenses.

(c) With regard to parts (a) and (b) of this regulation no record shall be removed as to any individual against whom any criminal proceeding has been initiated and is currently pending.

(d) CORI referred to in parts (a) and (b) of this regulation shall not be maintained for on-line computer access nor shall it be disseminated from such system to any individual or agency except as provided in Regulations 1.18 and 1.19.

(e) The CHSB shall inform criminal justice agencies seeking such CORI that the information is "off-line". It shall respond "no record" to inguiries from non-criminal justice agencies.

1.18 Restrictions on CORI removed from on-line access and dissemination

CORI removed from on-line access and dissemination under Regulations 1.15 and 1.17 shall be held in confidence and shall not be made available for review by, or dissemination to, any individual or agency except as follows:

(a) Where necessary for internal administrative purposes of the CHSB or for the regulatory responsibilities of the CHSB, Criminal History System Advisory Committee, or Security and Privacy Council.

(b) Subject to the approval of the CHSB when the information is to be used for statistical compilations in which the individual's identity is not disclosed and from which it is not ascertainable or for purposes of research conducted in accordance with CHSB regulations.

(c) When the individual to whom the information related seeks to exercise rights of access and review under the provisions of Regulations 3.9 and 3.10 or the information is necessary to permit adjudication under the provisions of Regulations 3.9 and 3.10 of any claim by the individual to whom the information relates that it is misleading, inaccurate or incomplete.

(d) When a criminal justice agency is required pursuant to a statute to utilize such information for pre-employment investigations of its prospective employees; provided, however, that in such case the criminal justice agency shall receive only such information as is required by statute to discharge its responsibilities.

(e) When CORI restricted under the provisions of Regulation 1.17 is required for impeachment of a witness in any judicial proceeding and a valid court order is received ordering release of such CORI for such purpose.

(f) When there has been a finding or verdict of guilt on an offense punishable by more than six months incarceration, CORI removed from on-line access and storage shall be made available to the probation officer and judge for sentencing purposes only.

(g) When the chief executive officer of a criminal justice agency certifies that such information is necessary for the conduct of a pending criminal investigation.

1.19 Listing of all CORI removed from on-line access and dissemination

The director of teleprocessing shall maintain a listing of all CORI removed from on-line access and dissemination under the provisions of Regulations 1.15 and 1.17. This listing shall be used only to effectuate the provisions of Regulations 1.15, 1.17 and 1.18.

1.20 Restoration of CORI to on-line access and dissemination

CORI removed from on-line access and dissemination under provisions of Regulation 1.17 shall be restored to on-line access and dissemination only to criminal justice agencies in the automated CORI system if the individual to whom such CORI relates has been found guilty of a subsequent offense punishable by incarceration for not less than six months.

1.21 Court or administrative orders sealing or purging CORI

(a) Upon any valid, final court or administrative order requiring sealing of any CORI, the CHSB shall restrict the access and dissemination of such CORI in accordance with the provisions of Regulation 1.18 and the tenor of such order.

(b) Upon any valid, final court or administrative order, requiring the purging of any CORI, the CHSB shall remove such CORI from the automated CORI system so that there is no trace of the information and no indication that it was removed.

1.22 Notification of closing or removal of CORI

(a) In the event that any CORI is removed from the automated CORI system in accordance with these regulations, all agencies or individuals to whom such CORI has been disseminated shall be promptly notified of the removal of such CORI.

(b) The CHSB shall provide those agencies notified under 1.22 (a) with appropriate instructions as to what action should be taken in accord with these regulations.

2.1 Definition of criminal justice agencies

Criminal justice agencies means those agencies at all levels of government which perform as their principal function activities relating to (a) crime prevention, including research or the sponsorship of research, (b) the apprehension, prosecution, adjudication, incarceration or rehabilitation of criminal offenders, or (c) the collection, storage, dissemination or usage of criminal offender record information.

2.2 Governmental units qualifying as "criminal justice agencies"

(a) For the purpose of M.G.L. c.6 secs. 167-178, and these regulations, the phrase "criminal justice agencies" shall include an office, department, board, commission, municipal corporation and the like, created by statute or constitution and any subunit thereof, created by statute or constitution, which performs as its principal function activities set forth in M.G.L. c.6 sec. 167.

(b) In the case of a statutorily or constitutionally created non-criminal justice office, department, board, commission, municipal corporation or the like, the phrase "criminal justice agencies" shall include any administratively created subunits which perform as their principal function, activities set forth in M.G.L. c.6 sec. 167 and which demonstrate to the CHSB a substantial need to have access to CORI.

2.3 Definition of "at all levels of government"

Agencies at all levels of government shall be restricted to agencies of the state, local, county or federal governments including intrastate and interstate regional bodies established by state or federal constitutions or by the legislative or executive branches of government and which are supported by public funds. The term "agencies" shall include comparable units of foreign governments.

2.4 Definition of "principal function"

In order to qualify as a criminal justice agency, an agency must perform as its principal function, activities set forth in M.G.L. c.6 sec. 167. Agencies seeking access to criminal offender record information shall demonstrate to the satisfaction of the CHSB that they have the requisite statutory authority and do, in fact, perform such activities by proof that they allocate a substantial portion of their time, money, personnel and other resources to such activities.

2.5 Definition of "crime prevention"

Crime prevention shall mean activities performed by police and prosecutorial agencies to deter criminal conduct.

2.6 Definition of "apprehension"

Apprehension means activities including but not limited to arrest of adults by police or other criminal justice agencies and setting of conditions of pre-trail release by bail commissioners and masters in chancery.

2.7 Definition of "prosecution"

Prosecution means activities relating to issuance of complaints and arrest warrants, indictments, preparation for and conducting of criminal trials and any subsequent proceedings related to such trials performed by grand juries, the Department of the Attorney General, district attorneys or other prosecutors.

2.8 Definition of "adjudication"

Adjudication means those activities including but not limited to conduct of criminal trials, the making of findings, and disposition of adults in courts of criminal jurisdiction and the activities of court clinics and the Division of Legal Medicine of the Department of Mental Health in competency and related matters relating to adult criminal proceedings.

2.9 Definition of "incarceration"

Incarceration means activities including but not limited to pretrial and post-conviction detention of adults in police lock-ups, jails, houses of correction, and adult correctional institutions and the detention of adults in mental health institutions in cases involving drug violations, transfers from correctional institutions, criminal competency determinations, and acquittal by reason of insanity.

2.10 Definition of "rehabilitation"

Rehabilitation means activities performed by courts, probation offices, correctional institutions and parole agencies, among others, intended for the treatment, care, supervision or social readjustment of adults who have been adjudicated guilty, sentenced or against whom criminal charges are pending.

2..11 Definition of activities relating to "the collection, storage, dissemination or usage of CORI"

Activities relating to the collection, storage, dissemination or usage of CORI means those activities performed by the CHSB, Criminal History System Advisory Committee (CHSAC), the Security and Privacy Council and those performed by agencies at all levels of government operating criminal justice information systems.

2.12 Juvenile agencies which perform criminal justice functions

Agencies of the juvenile justice system which perform as their principal function criminal justice activities with respect to juveniles shall be deemed criminal justice agencies for the purposes of receiving CORI from CORI systems, M.G.L. c.6 secs. 167-178, and these regulations.

2.13 Persons within criminal justice agencies eligible for access to CORI

(a) CORI shall be disseminated under the provisions of M.G.L. c.6 sec. 172(a) only to those officials and employees of criminal justice agencies determined by the administrative heads of such agencies to require such information for the actual performance of their criminal justice duties. Such administrative heads shall maintain and keep available for inspection by the CHSB a list of such authorized employees by position, title or name.

(b) Consultants and contractors to criminal justice agencies shall have access to CORI only if such access is specified in their contract and is essential to performance or contractual obligations related to the management or computerization of CORI. In addition, no criminal justice agency shall disseminate CORI to or permit access to CORI by any consultant or contractor unless it has obtained the prior written approval of the CHSB for such dissemination or access.

(c) Consultants and contractors to criminal justice agencies having access to CORI shall complete a written agreement to use CORI only as permitted by M.G.L. c.6 secs. 167-178 and these regulations with such agreement to be held by the criminal justice agency and subject to review by the CHSB.

2.14 Limitations on access

Criminal justice agencies shall request and have access only to such CORI as is reasonably necessary for the actual performance of such agencies' criminal justice duties and responsibilities.

2.15 Dissemination outside a certified subunit of a non-criminal justice agency

A certified criminal justice agency which is a subunit of a non-criminal justice agency shall disseminate CORI only in accordance with the provisions of Regulation 2.13. In no case shall CORI be disseminated from the subunit, directly or through any intermediary, to any unauthorized official, employee, contractor or consultant of the non-criminal justice agency of which it is a part.

2.16 Definition of individuals and agencies authorized access by sec. 172(b)

(a) Except as provided in M.G.L. c.6 secs. 167-178 and these regulations, criminal offender record information shall be disseminated only to such noncriminal justice individuals and agencies as are authorized access to such information by statute.

(b) "Authorized access by statute" means that there be a specific statutory directive that such individual or agency have access to CORI or a statutory requirement that such individual or agency consider CORI in his or its decision-making process.

(c) Such directive or requirement imposed solely by administrative or executive rule or regulation shall not constitute sufficient authorization for access to CORI.

(d) A statutory requirement that an individual or agency consider "good character", "moral character", "trustworthiness" and the like, in its decision-making process shall not constitute sufficient authorization for access to CORI.

2.17 Limitations on dissemination of CORI

To the extent practicable, only such CORI as is necessary for the discharge of the statutory responsibilities of an individual or agency authorized access under M.G.L. c.6 sec. 172(b) shall be requested and disseminated to such individual or agency. If such responsibilities can be discharged by answers to specific questions, then, to the extent practicable, only such CORI shall be requested and disseminated as is necessary to answer such questions.

2.18 Use of CORI for rehabilitation purposes

(a) Officials and employees of criminal justice agencies engaged in rehabilitative activities may allow consultants directly under their supervision and control who are also associated with educational institutions, half-way houses, group residences, social service agencies, medical practitioners or similar individuals to utilize, but not disseminate, CORI for purposes of obtaining services or benefits for individuals named in such CORI for whom they are responsible, provided that each of such individuals involved, himself, gives his informed consent to such access.

(b) Consultants utilizing CORI under the provisions of Regulation 2.18(a) shall:

(i) establish their status as full-time or part-time employees of such criminal justice agency(ies), or as individuals who have contracts with such criminal justice agency(ies) by documentation submitted to the CHSB;

(ii) be subject to the provisions of Regulations 2.13-2.15;

(iii) use CORI only under the direct supervision and control of such criminal justice agency officials and/or employees;

(iv) be notified that the retention and dissemination of such CORI is subject to the provisions of M.G.L. c.6 secs. 167-178 and these regulations;

(v) not disseminate such CORI to any agency or individual outside of the criminal justice agency having custody of the CORI, except that reports based on, but not containing

the CORI, which recommended rejection or admission to a program, or prescribe treatments, services, and/or benefits for the individual, may be conveyed to the rehabilitative agency or individual with whom such consultant is associated; and

(iv) complete a written agreement not to disclose any CORI and to use CORI only as permitted by this regulation, with such agreement to be held by the criminal justice agency and subject to review by the CHSB.

2.19 Access by out-of-state agencies

(a) Except for purposes of approved research under M.G.L. c.6 sec. 173, CORI shall be disseminated only to federal, state and local agencies in other countries and states which are eligible for access to CORI under the provisions of M.G.L. c.6 secs. 172(a) and 172(b).

(b) The CHSB shall maintain a list of federal, state and local agencies qualifying under the provisions of M.G.L. c.6 secs. 172(a) and 172(b), and these Regulations.

(c) Unless a blanket statement concerning restrictions on access and dissemination of CORI has previously been sent, all CORI dissemination to eligible out-of-state and federal agencies shall be accompanied by a copy of M.G.L. c.6 secs. 167-178 and regulations adopted thereunder, a written statement of the requirements for compliance with such restrictions and sanctions for non-compliance.

(d) Any out-of-state or federal agencies which the director of teleprocessing has reason to believe have violated the provisions of M.G.L. c.6 secs. 167-178 or the regulations adopted thereunder may have their eligibility for access to CORI suspended for a period of ten days by the director of teleprocessing pending further consideration and action by the CHSB.

2.20 Computer terminal access to CORI by noncriminal justice agencies

Authorized noncriminal justice agencies or individuals and criminal justice subunits of such agencies and out-of-state agencies shall not have direct computer terminal access to CORI. Such access shall be effected only through central control terminals designated for such purpose by the CHSB.

2.21 Access by other than personal identifying information

Except for approved research programs, access and dissemination of CORI shall be limited to inquiries based on name, fingerprints, or other personal identifying characteristics. No CORI shall be disseminated to authorized criminal justice agencies whose inquiries are based upon categories of offenses or any data elements other than personal identifying characteristics unless such individuals or agencies have first obtained written authorization from the Com-

missioner of Probation or his deputy for access based on other than personal identifying characteristics which would identify a specific individual.

2.22 Definition of "dissemination"

Dissemination means the release, transfer or divulgence of CORI in any manner or form including permitting any person to inspect and/or copy CORI.

2.23 Definition of "automated CORI system"

Automated CORI system means the data processing and communications system operated and maintained by the CHSB in accordance with the provisions of M.G.L. c.6 sec. 168 for the collection, storage, exchange, dissemination and distribution of CORI.

2.24 Certification procedures

(a) Any individual or agency requesting certification for access to CORI under the provisions of M.G.L. c.6 sec. 172 shall apply in writing to the CHSB.

(b) The application shall be on a form provided by the CHSB and shall contain the name and address of the applicant the subsection of M.G.L. c.6 sec. 172 under which it seeks access, and a statement of the basis upon which such access is sought. The applicant shall include with his application documentary evidence which establishes its eligibility for access to CORI under M.G.L. c.6 sec. 172 and these regulations. A copy of the application and accompanying materials shall be sent by the applicant to the Security and Privacy Council.

(c) The CHSB may require the applicant to submit such additional evidence of eligibility and to make such presentations to the CHSB as the CHSB deems necessary.

(d) If an application for certification is received at least 21 days prior to the next regularly scheduled meeting of the CHSB, the CHSB shall consider it at such meeting. Applications received less than 21 days prior to regularly scheduled CHSB meetings shall be considered at the next subsequent meeting of the CHSB.

(e) The CHSB shall make a finding in writing of the eligibility or non-eligibility of an applicant for access to CORI. Such written finding, together with a written statement of the reasons for the CHSB's decision shall be sent to the applicant forthwith.

3.1 Notice to individuals of the existance of CORI concerning

The Board shall give notice to each individual in the following manner as to the existence of CORI concerning him:

(a) When a criminal defendant first comes to court in connection with his case, the probation officer shall give him in hand a notice, on a form approved by the director of teleprocessing, advising the defendant in clearly understandable language of the existence of CORI, of his rights of inspection, protest and removal of CORI relating to him from on-line access under these regulation and that he may have, on request, a copy of these regulations. If requested, the probation officer shall give him a copy of these regulations.

(b) When a present or former criminal defendant is discharged by a court, released from probation or from incarceration under sentence without parole or is otherwise separated or about to be separated from the criminal justice system, if not at substantially the same time as in paragraph (a), above, the probation, parole or other officer or person dealing with him shall give him in hand the notice set forth in paragraph (a), above, and if requested, a copy of these regulations.

(c) When the automated CORI system commences on-line operations, or reasonably soon thereafter, the director of teleprocessing shall cause to be sent by first class mail to each individual on whom CORI is held in such system a notice substantially as set forth in paragraph (a), above; and if, thereafter, any such individual requests a copy of these regulations, the director shall cause the same to be mailed to said individual.

(d) Within 90 days after the CORI system commences on-line operations, and annually thereafter, the director of teleprocessing shall file with the Secretary of State and cause to be published in one or more newspapers of general circulation in each standard metropolitan statistical area of the Commonwealth, as defined by the United States Bureau of the Census, once each week for three consecutive weeks a notice setting forth in clearly understandable language the following:

(1) the name of the CORI system and the title and address of the director of teleprocessing;

(2) the purpose of the CORI system;

(3) the definition of CORI or a paraphrase thereof in clearly understandable language;

(4) the approximate number of individuals about whom information is then held in the CORI system;

(5) that the CORI is held in computerized form;

(6) a generalized description of the persons and organizations having access to the system;

(7) notification that any individual who thinks CORI with respect to him is held in the system may have a search made, and, if such information is so held, may inspect, copy and object to it as provided in these regulations; and

(8) a statement that the notice is published in compliance with these regulations and an indication as to where a copy of these regulations may be obtained.

The director of teleprocessing shall see that copies of these regulations are deposited and freely available to the public, on request, at all of the places where CORI may be inspected under Regulation 3.5.

3.2 Inspection of CORI in manual information systems

Agencies at which criminal offender records are sought to be inspected shall prescribe reasonable hours and places of inspection, and shall impose such additional restrictions as may be approved by the CHSB, including fingerprinting, as are reasonably necessary both to ensure the record's security and to verify the identities of those who seek to inspect them.

3.3 Release of data to individual

(a) Each individual shall have the right to inspect or copy CORI relating to him in accordance with M.G.L. c.6 sec. 175 and these regulations.

(b) Any individual who is denied the right to inspect or copy CORI relating to him may, within 30 days of such denial, petition the CHSB for an order requiring the release of such CORI to him, with a copy of such petition to be sent to the Security and Privacy Council. The CHSB shall act on such petition within a reasonable time.

3.4 Copying of records

An individual shall, if practicable, be permitted to receive a computer printout or photocopy of CORI referring to him. The reviewing individual may make a written summary or notes in his own handwriting of the information reviewed, and may take with him such summary or notes. Before releasing any exact reproduction or hard copy of CORI to an individual, the agency holding the same shall remove all personal identifying information from the CORI. Such agency may, with prior approval of the CHSB, impose a reasonable charge for copying services. The director of teleprocessing shall provide forms for seeking access to CORI.

3.5 Inspection of CORI in the automated CORI system

CORI maintained in the automated CORI system shall be available for inspection by the individual to whom it refers only at reasonably convenient locations designated by the CHSB. The CHSB shall designate at least one such location within each county.

3.6 Parties authorized to inspect and copy CORI

An individual to whom CORI refers, or his attorney, or legal representative who is a law student, or any authorized agent of his attorney who is also an attorney holding a sworn written authorization from such individual and able satisfactorily to identify himself shall be permitted to inspect and copy such CORI for such individual's personal use in accordance with the requirements of 3.4.

3.7 Review of a record and verification or exceptions

(a) Each individual reviewing CORI shall be informed by the holding agency of his rights of challenge under M.G.L. c.6 sec. 175. Each such individual shall be informed that he may submit written exceptions to the agency concerning the information's contents, completeness, accuracy, mode of maintenance and/or dissemination.

(b) A record of each review shall be maintained by the holding agency on a form provided or approved by the CHSB. Each such form shall be completed and signed by the supervisory employee or agent present at the review and the reviewing individual. The form shall include a recording of the name of the reviewing individual, the date of the review, and whether or not any exception was taken to the accuracy, completeness, contents, mode of maintenance and/or dissemination of the information reviewed. The record of each review which is kept to meet requirements of this section shall be open only to the CHSB, the Security and Privacy Council, and the individual.

3.8 Recording of and action upon exceptions

(a) Should an individual elect to submit exceptions to the contents, accuracy, completeness, mode of maintenance and/or dissemination of the CORI referring to him, he shall record such exceptions on a form provided or approved by the CHSB. The form shall include an oath or affirmation signed by the individual, that the exceptions are made in good faith and that they are to the best of the individual's knowledge and belief true. One copy of the form shall be forwarded to the review officer or officers of the criminal justice agency in question. An officer or officers shall be designated for that purpose in each criminal justice agency and their names submitted to the CHSB. A second copy of the form shall be forwarded to the CHSB.

(b) The criminal justice agency shall, within thirty days of the filing of written exceptions, complete an audit of the individual's criminal offender record information appropriate to determine the accuracy of the exceptions. The CHSB, the individual and the contributing agency shall be informed in writing of the results of the audit and be provided with copies of source documentation relevent to disputed CORI. Should the audit disclose inaccuracies or omissions in the information, the criminal justice agency shall within ten days of the completion of the audit cause appropriate alterations or additions to be made and notice of its actions to be given to the CHSB and the individual involved. Any other agencies in this or any other jurisdiction to which the criminal offender record information had

previously been disseminated shall be notified by the criminal justice agency holding the record to alter their records accordingly.

(c) A copy of the form on which the exceptions have been recorded, written audit results, copies of source documents and the agency's written decision on any exceptions shall be forwarded to the Security and Privacy Council.

(d) Such records as are kept to meet the requirements of this section shall be available only to the CHSB, the Security and Privacy Council, the criminal justice agency and the individual.

3.9 Challenges to the accuracy or completeness of criminal offender record information

Any person who believes that criminal offender record information which refers to him is inaccurate, incomplete, or improperly maintained or disseminated may request any criminal justice agency in this State with custody or control of the information to purge, modify or supplement that information. Should the agency decline to purge, modify or supplement such CORI, or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual may request review by the Security and Privacy Council within thirty (30) days of the agency's decision. Failure of the agency to act within the time prescribed in Regulation 3.8 shall be deemed a decision adverse to the complaina

3.10 Review by the CHSB of the Council's recommendations

(a) The Security and Privacy Council shall issue written findings to the CHSB within 60 days of the receipt of the request for review. The CHSB shall within ten days of the receipt of any recommendations of the Council make its findings and disseminate its orders, if any, to individuals and agencies to which the records in question have been communicated as well as to the individual to whom the CORI refers.

(b) The CHSB may require the individual challenging the record and any criminal justice agency within the State to file or present in person such written and oral statements, testimony, documents and arguments as the interests of justice may require.

(c) The CHSB shall issue written findings of fact, conclusions and orders, in which the relief to which an individual is entitled and the basis of its decision are fully and specifically described. Findings, conclusions and orders shall be adopted by a majority vote of the CHSB.

3.11 Burden of proof

The individual challenging the validity of CORI shall have the burden in any proceedings before the CHSB of establishing reasonable grounds for believing that such CORI is inaccurate, incomplete, misleading or improperly maintained or disseminated. If such reasonable grounds are established in accordance with these regulations, the criminal justice agency holding the challenged CORI shall have the burden of proving by a preponderance of the evidence that the exceptions to the record are not well taken and that the CORI should not be deleted, modified or supplemented in whole or in part, or any order issued.

3.12 Circulation of challenged records

CORI challenged under the provisions of these regulations shall be deemed to be accurate, complete and valid until otherwise ordered by the CHSB. Challenged CORI may be disseminated to authorized individuals and agencies but only with a notation stating that the validity of such CORI is being challenged and the basis for such challenge. Agencies disseminating such CORI shall maintain complete and accurate records of agencies and individuals to whom they disseminate such challenged CORI.

3.13 Protection from accidental loss or injury

The director of teleprocessing of the CHSB with the approval of the CHSB shall institute procedures for protection of information in the automated CORI system from environmental hazards including fire, flood and power failure. Appropriate elements shall include:

(a) adequate fore detection and quenching systems;
(b) watertight facilities;
(c) protection against water and smoke damage;
(d) liaison with local fire and public safety officials;
(e) fire resistant materials on walls and doors;
(f) emergency power sources; and
(g) back-up files.

3.14 Protection against intentional harm

(a) The director of teleprocessing with the approval of the CHSB shall adopt security procedures which limit access to information in the automated CORI system. These procedures shall include use of guards, keys, badges, passwords, access restrictions, sign-in logs, or like safeguards.

(b) All facilities which house the main automated CORI system shall be so designed and constructed as to reduce the possibility of physical damage to the information. Appropriate steps in this regard should include: physical limitations on access; security storage for information media; heavy duty, non-exposed walls; perimiter barriers; adequate lighting; detection and warning devices; and closed circuit television.

(c) The director of teleprocessing shall, with the approval of the CHSB, determine the number and location of, and the security requirements applicable to, remote computer terminals on the automated CORI system. The CHSB and the Security and Privacy Council shall have the right to enter the premises of any agency having such terminals for the purpose of inspecting such terminals and related facilities.

3.15 Unauthorized access

The director of teleprocessing shall, with the approval of the CHSB, maintain controls over access to information in the automated CORI system by requiring identification, authorization, and authentication of system users and their need and right to know. Appropriate processing restrictions and management techniques shall be employed to ensure information security in the automated CORI system. The CHSB shall be notified of any threats to the system.

3.16 Personnel security

(a) The director of teleprocessing and the heads of all agencies administering CORI systems shall cause to be investigated the previous employment and criminal record of employees and contractors assigned to CORI systems.

(b) Investigations shall be conducted prior to assignment to the CORI system. Willful giving of false information shall disqualify an applicant or employee from assignment to the CORI system.

(c) Each employee and contractor assigned to a CORI system shall be required to understand all rules and regulations applicable to such system. The director of teleprocessing shall establish appropriate programs of formal training concerning system security and privacy each year.

3.17 Personnel clearances

(a) All personnel assigned to the automated CORI system, including those having access to remote terminals, shall be assigned by the director of teleprocessing an appropriate security clearance which shall be renewed annually after investigation and review. The director of teleprocessing shall report periodically to the CHSB concerning issuance of personnel clearances.

(b) Personnel shall be granted security clearances for access only to such sensitive places, things and information as they have a demonstrated need and right to know.

(c) No person shall have access to any place, thing or information of a higher sensitivity classification than the highest valid clearance held by such person.

(d) Clearances shall be granted by the director of teleprocessing on a selective and individual basis following appropriate background investigations and review and strict adherence to need and right-to-know principles.

(e) Clearances shall be periodically reviewed to ensure that each employee is accorded the lowest possible clearance consistent with his responsibilities.

(f) Clearances shall be executory and may be revoked or reduced to a lower sensitivity classification at the will of the grantor. Adequate notice must be given of the reduction or revocation to all other agencies that previously relied upon such clearances.

(g) To provide evidence of a person's sensitivity classification clearance, the grantor of such clearance shall provide an authenticated card or certificate. Responsibility for control of the issuance, adjustment or revocation of such documents shall rest with the grantor. All such documents shall have an automatic expiration date requiring affirmative renewal annually.

3.18 Implementation of security classification system

The director of teleprocessing shall, with the approval of the CHSB, implement a sensitivity classification system for the automated CORI system including remote terminals. The general guidelines for this purpose are:

(a) Places and things shall be assigned the lowest classification consistent with their proper protection.
(b) Appropriate utilization of classified places and things by qualified users shall be encouraged.
(c) Whenever the sensitivity of places or things diminishes or increases, it shall be reclassified without delay.
(d) In the event that any place or thing previously classified is no longer sensitive and no longer requires special security or privacy protection, it shall be declassified.

3.19 Classification guidelines

Places and things included in the automated CORI system shall be classified by the director of teleprocessing with the approval of the CHSB in accordance with the following system:

(a) Secret -- places and things which require maximum special security provisions and particularized privacy protection.
(b) Confidential -- places and things which require a high degree of special security and privacy protection.
(c) Restricted -- places and things which require minimum special security consistent with good security and privacy practices.

3.20 System certification

Before the automated CORI system commences on-line operations and periodically thereafter, the CHSB shall request and receive from an independent panel of three to five consultants a system certification attesting that the system as designed and operated is substantially secure against unauthorized access and otherwise performs substantially as is necessary to ensure compliance with these regulations.

3.21 Listing of dissemination of CORI

Each agency or individual authorized to disseminate CORI shall maintain a listing of both CORI disseminated and the agencies or individuals both within and outside the Commonwealth to which it has disseminated each item of CORI. Such listings shall be maintained in a form prescribed by the CHSB, for at least one year from the day of each such dissemination and indicate the agencies or individuals to whom such CORI was disseminated. Such listing shall be made available for audit or inspection by the CHSB, the CHSAC or Security and Privacy Council at such times as the CHSB, CHSAC or Council shall require.

3.22 Administrative sanctions

(a) Any employee of any criminal justice agency who violates the provisions of M.G.L. c.6 secs. 167-178, these regulations, or security standards for automated CORI systems established under them, shall, in addition to or in lieu of any applicable criminal or civil penalties, be denied access to CORI by the CHSB and be administratively disciplined by suspension, discharge, reduction in grade, transfer or such other administrative penalties provided, however, that such penalties shall be imposed only if they are permissable under any applicable statutes and/or contracts governing the terms of employment of the employee or officer in question.

(b) Any agency or individual authorized access to the automated CORI system who violates the provisions of M.G.L. c.6 secs. 167-178, these regulations or security standards established under them, may, in addition to any applicable civil or criminal penalties, be denied access to CORI in such system for such periods of time as the CHSB deems reasonable and appropriate.

4.1 Definition of "Regulation"

Regulation includes the whole or any part of any rule, regulation, standard or other requirement of general application and future effect, including the amendment or appeal thereof, adopted by the CHSB to implement or interpret the law enforced or administered by it, but does not include (a) an advisory ruling issued by it; (b) procedures concerning only the internal management or discipline of the CHSB, and not substantially affecting the rights of or the procedures available to the public or that portion of the public affected by the CHSB's activities; or (c) decisions issued in adjudicatory proceedings.

4.2 Petition for issuance, amendment, or repeal of regulation

Any interested person or his attorney may file with the CHSB a petition for the adoption, amendment or repeal of any regulation. The petition shall be addressed to the CHSB and sent to the chairman by mail or delivered in person during normal business hours. All petitions shall be signed by the petitioner or his attorney, contain his address or the address of his attorney, set forth clearly and concisely the text of the proposed regulation, and shall include any data, facts, view or arguements deemed relevant by the petitioner, and shall be verified.

4.3 Initial procedure to handle recommended regulations

Upon receipt of a petition for the adoption, amendment or repeal of a regulation submitted pursuant to Regulation 4.1 or upon written recommendation by a member of the CHSB that a regulation be adopted, amended, or repealed, the CHSB shall determine whether to schedule the petition or recommendation for further proceedings in accordance with Regulation 4.4 If the regulation has been presented to the CHSB under Regulation 4.2, the chairman of the CHSB shall, within ten days after such determination, notify the petitioner of the CHSB's action.

4.4 Procedure for the adoption, amendment, or repeal of regulations when a public hearing is required

(a) Notice

Notice of a public hearing shall be given at least twenty-one (21) days prior to the date of the hearing unless some other time is specified by any applicable law. The CHSB shall notify the Secretary of State of the public hearing at least thirty (30) days in advance thereof in accordance with M.G.L. c.30A sec. 2. The CHSB shall publish the notice in at least one (1) newspaper of general circulation, and where appropriate, in such trade, industry or professional publications as the CHSB may select. The CHSB shall likewise notify in writing any person specified by any law and any person or group which has filed a written request for notice pursuant to Regulation 4.8.

The notice shall contain the following:

i. the CHSB's statutory authority to adopt the proposed regulations;
ii. the time and place of the public hearing;
iii. the express terms or the substance of the proposed regulation; and
iv. any additional matter required by any law.

The above notwithstanding, the CHSB shall also comply with any applicable statute which contains provisions for notice which differ from those contained herein.

(b) Procedure

On the date and at the time and place designated in the notice referred to in Regulation 4.4(a), the CHSB shall hold a public hearing. The meeting shall be opened, presided over and adjourned by the chairman or other member designated by the chairman. Within ten (10) days after the close of the public hearing, written statements and arguments may be filed with the CHSB unless the CHSB in its discretion finds such to be unnecessary. The CHSB shall consider all relevant matter presented to it before adopting, amending or repealing any regulation.

(c) Oral participation

Any interested person or his duly authorized representative, or both, shall be given an opportunity to present oral statements and arguments In its discretion, the CHSB may limit the length of oral presentation.

(d) Emergency rule

If the CHSB finds that the immediate adoption of a regulation is necessary for the public health, safety or general welfare, and that observance of requirements of notice and public hearings would be contrary to the public interest, the CHSB may dispense with such requirements and adopt the regulation as an emergency regulation. The CHSB's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulations as filed with the Secretary of State. Any emergency regulation so adopted shall state the date on which it is to be effective and the date upon which it shall expire. If no effective date is stated, the regulation shall be presumed to take effect upon being filed with the Secretary of State under Regulation 4.6. An emergency regulation shall not remain in effect for longer than three (3) months unless during the time it is in effect the CHSB gives notice and holds a public hearing and adopts it as a permanent regulation in accordance with these regulations.

4.5 Availability of regulations

The chairman of the CHSB shall be responsible for keeping a book containing all the CHSB's regulations. All the regulations of the CHSB shall be available for inspection during normal business hours at the CHSB's offices. Copies of all rules shall be available to any person on request. The CHSB may charge a reasonable fee for each copy.

4.6 Filing of regulations

Upon the adoption of a regulation, an attested copy shall be filed with the Secretary of State together with a citation of the statutory authority under which the regulation has been promulgated. The regulation shall take effect upon publication pursuant to M.G.L. c.30A sec. 6 unless a later date is required by any law or is specified by the CHSB.

4.7 Advisory ruling

Any interested person or his attorney may at any time request an advisory ruling with respect to the applicability to any person, property, or factual situation of any statute or regulation enforced or administered by the CHSB. The request shall be addressed to the CHSB and sent to the chairman of the CHSB by mail or delivered in person during normal business hours.

All requests shall be signed by the person making it or his attorney, contain his address or the address of his attorney, and state clearly and concisely the substance or nature of the request. The request may be accompanied by any supporting data, views or arguments. If the CHSB determines that an advisory ruling will not be rendered, the CHSB shall as soon as practicable notify the petitioner that the request is denied. If an advisory ruling is rendered, a copy of the ruling shall be sent to the person requesting it or his attorney.

The CHSB may notify any person that an advisory ruling has been requested and may receive and consider arguments, views, or data from persons other than the person requesting the ruling.

4.8. Request for notice of hearings

(a) Who may file.

Any person or group may file a request in writing to receive notice of hearings or regulations which may affect such person or group.

(b) Form of request.

The request shall contain the following:

i. name of person or group;
ii. address; and
iii. subject matter of regulations which may affect the person or group

(c) When filed.

The request shall be filed with the chairman of the CHSB and shall be renewed during the month of December to remain effective during the subsequent calendar year.

4.9 Contents of regulations

The CHSB will incorporate in any regulation adopted a concise general statement of their basis and purpose.

4.10 Grant of hearing

A public hearing will be granted whenever the CHSB seeks to revoke any certification granted under M.G.L. c.6 sec. 172 and otherwise as the CHSB may determine in specific cases. The CHSB may call informal public hearings, not required by statute, to be conducted under the regulations where applicable, for the purpose of rulemaking or to obtain information necessary or helpful in the determination of its policies, or the carrying out of its duties, and may request the attendance of witnesses and the production of evidence.

4.11 Calendar

The chairman of the CHSB shall maintain a docket and a hearing calendar of all proceedings set for hearing. So far as practicable, hearings shall be heard in the order in which they have been listed on the CHSB's docket.

4.12 Place

All hearings shall be held at Boston at the offices of the CHSB unless by statute or vote of the CHSB a different place is designated.

4.13 Settlement: pre-hearing procedure

(a) Opportunity for information settlement.

Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for the submission and consideration of facts, arguement, or proposal of adjustment or settlement, without prejudice to any party's rights. No stipulation, offer or proposal shall be admissable in evidence over the objection of any party in any hearing on the matter.

(b) Pre-hearing conference.

(1) Prior to any hearing, the CHSB or presiding officer may direct all interested parties, by written notice, to attend one or more pre-hearing conferences for the purpose of considering any settlement under Regulation 4.11(a), formulating the issues

in the proceedings and determining other matters to aid in its disposition. In addition to any offers of settlement or proposals of adjustment, there may be considered the following:

(a) simplification of the issues;
(b) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
(c) limitation on the number of witnesses;
(d) the procedure at the hearing;
(e) the distribution to the parties prior to the hearing of written testimony and exhibits;
(f) consolidation of the examination of witnesses by counsel; and
(g) such other matters as may aid in the disposition of the proceedings.

(2) The presiding officer may require, prior to the hearing, exchange of exhibits and any other material which may expedite the hearing. He shall assume the responsibility of accomplishing the purposes of the notice of the pre-hearing conference so far as that may be possible without prejudicing the rights of any party.

(3) In any proceeding under these regulations the presiding officer may call the parties together for an informal conference prior to the taking of any testimony or may recess the hearing for such a conference, with a view to carrying out the purposes of this rule.

4.14 Conduct of hearings

(a) Presiding officer: powers and duties

The hearing shall be conducted by a presiding officer who shall be a hearing officer designated by the CHSB, or in such cases as the CHSB may determine, by a single member of the CHSB. The presiding officer shall have the authority to arrange and give notice of hearing; sign and issue subpoenas; take or cause depositions to be taken; rule upon proposed amendments or supplements to to pleadings; hold conferences for the settlement or simplification of issues; regulate the course of the hearing; prescribe the order in which evidence shall be presented; dispose of procedural requests or similar matters; hear and rule upon motions; administer oaths and affirmations; examine witnesses; direct witnesses to testify or produce evidence available to them which will aid in the determination of any questions of fact in issue, rule upon offers of proof and receive relevant material, reliable and probative evidence; act upon petitions to intervene; permit submission of facts, arguments and proposals of adjustment; hear oral arguments at the close of testimony; fix the time for filing briefs, motions and other documents in connection with hearings; and dispose of any other matter that normally and properly arises in the course of proceedings. The presiding officer or the CHSB may exclude any person from a hearing for disrespectful, disorderly or contumacious language or conduct.

(b) Disqualification of presiding officer

Any presiding officer may at any time withdraw if he deems himself disqualified, in which case there will be designated another presiding officer. If a party to a proceeding or his representative files a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the CHSB will determine the matter as a part of the record and decision in the case.

(c) Objections and exceptions

Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a party, at the time that a ruling of the presiding officer is made or sought, makes known to the presiding officer the action which he desires taken or his objections to such action and his grounds therefor; provided, that if a party has no opportunity to object to a ruling at the time it is made or to request a particular ruling at an appropriate time, such party, within five (5) days of notification of action taken or refused, shall state his objection and his grounds therefor.

(d) Offers of proof

Any offer of proof made in connection with an objection taken to a ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and of the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(e) Presence of staff members

The names of the members of the CHSB staff present at a hearing, who have been assigned to work on, or to assist in the proceeding, shall be noted in the record.

(f) Order of presentation

In any hearing held with respect to the revocation of any certification under M.G.L. c.6 sec. 172, the counsel for the CHSB shall open and close the presentations. Where there is more than one party in the same proceeding, the order of presentation shall be in the discretion of the presiding officer. After all the evidence and testimony of the person opening has been received, the evidence and testimony of all other parties or others who have been allowed to participate in the hearing shall be received in the order determined by the presiding officer. All witnesses shall be subject to examination by the presiding officer, counsel for the CHSB, counsel for other parties, and counsel for any other person as permitted by the presiding officer. A reasonable amount of time for the preparation of cross examination shall be afforded.

(g) Conduct of persons present

All parties, counsel, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of this Commonwealth. Where such decorum is not observed, the presiding officer may take such action as he deems appropriate including, but not limited to, the exclusion of any such individuals from further participation in the proceeding.

(h) Additional evidence

At any stage of the hearing the presiding officer may call for further evidence upon any issue and require such evidence to be presented by the party or parties concerned or by the counsel for the CHSB either at that hearing or adjournments thereof. At the hearing, the presiding officer may authorize any party to file specific documentary evidence as a part of the record within a specified time.

4.15 Transcripts

(a) Transcript and record

Of its own accord, the CHSB may provide that all proceedings in a pending matter be officially recorded by a reporter appointed for that purpose at the CHSB's expense. In the event that the CHSB does not so provide, any party may request leave to provide a reporter for the purpose of officially recording the proceeding at its own expense. Such request shall be made to the presiding officer at least three (3) days in advance of the proceeding. In the event that no reporter is present to officially record a proceeding, a sound recording will be made. At the request of any party, the CHSB shall provide a copy of the transcript of the sound recording upon payment of the reasonable cost of preparing said copy. The CHSB need not make said copy available to any party until payment has been received.

(b) Transcript corrections

Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. Transcript corrections agreed to by oposing attorneys may be incorporated into the record if and when approved by the presiding officer at any time during the hearing, or after the close of evidence, but not more than ten (10) days from the date of receipt of the transcript. The presiding officer may call for the submission of proposed corrections and make disposition thereof at appropriate times during the course of the proceeding. Any objections to the accuracy of the transcript not raised within ten (10) days after the transcript is made available to the objecting party shall be deemed waived.

4.16 Consolidation

The presiding officer or the CHSB upon its own motion, or upon motion by a party or other person joined in the proceeding, may order proceedings involving a common question of law or fact to be consolodated for hearing on any or all of the matters in issue in such proceedings.

4.17 Evidence

(a) The CHSB shall follow the rules of evidence observed by courts when practicable and shall observe the rules of privilege recognized by law, except as otherwise provided by any law. There shall be excluded such evidence as is unduly repetitious or cumulative or such evidence as is not of the kind on which reasonable persons are accustomed to rely in the conduct of serious affairs. All unsworn statements appearing in the record shall not be considered as evidence on which a decision may be based.

(b) Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of this Commonwealth and in addition, the CHSB or the presiding officer may take notice of general, technical, or scientific facts within their specialized knowledge; provided, that the CHSB or the presiding officer shall notify all parties of the material so noticed, and provided further, that any party on timely request be afforded an opportunity to contest the matters so noticed.

(c) Documentary evidence; incorporation by reference: CHSB's files

Any matter contained in any records, investigations, reports and documents in the posession of the CHSB of which a party or the CHSB desires to avail itself as evidence in making a decision, shall be offered and made a part of the record in the proceeding. Such records and other documents need not be produced or marked for identification, but may be offered in evidence by specifying the report, document or other file containing the matter so offered.

(d) Prepared testimony

The presiding officer may allow prepared direct testimony of any witness to be offered as an exhibit and may omit oral presentation of the testimony. Copies of such proposed exhibit shall be served upon all persons who have filed an appearance and on staff counsel at least seven (7) days in advance of the session of the proceeding at which such exhibit is to be offered.

(e) Stipulations

The parties to any proceeding before the CHSB, by stipulation in writing filed with the CHSB or entered in the record, may agree upon the fact or any portion thereof involved in the contrc versy, which stipulation may be regarded and used as evicence at the hearing. The CHSB may in such cases require such additional evidence as it may deem necessary.

4.18 Subpoenas

(a) Issuance

The CHSB and all other parties have authority in accordance with M.G.L. c. 30A sec. 12 to issue subpoenas requiring the attendance and testimony of witnesses and the production of any documents in question in the proceeding. Subpoenas for the attendance of witnesses or the production of documents may be issued without notice to any other party.

(b) Motions to quash or modify

Within a reasonable time fixed by the presiding officer, any person to whom a subpoena is directed may petition the presiding officer to revoke or modify a subpoena.

4.19 Reopening hearings

No person may present additional evidence after having rested nor may any hearing reopen after having been closed, except upon motion and showing of good cause. Such motions shall be filed with the presiding officer who shall notify all parties of his action upon the motion. Notwithstanding the above, the presiding officer or the CHSB may, at any time prior to the rendering of a decision, reopen the hearing on its own motion. In case of such reopening on motion of the presiding officer or CHSB, the parties shall be notified and the hearing shall not be convened less than five (5) days after the sending of such notice.

4.20 Decisions

(a) Contents and service

All recommended, tentative, and final decisions will include a statement of findings and conclusions as well as the reasons or basis therefor, upon all material, issues of fact, law, or discretion presented on the record, and the appropriate relief or denial thereof. A copy of each final decision when issued shall be served on the parties to the proceeding.

(b) Filing of presiding officer's recommended decision with the CHSB

The presiding officer shall file his recommended decision together with his statement of findings and conclusions, as well as the reasons or basis therefor, upon all material issues, fact, law, or discretion presented on the record, and the appropriate relief or denial thereof with the CHSB as soon as practicable after the close of any proceeding.

(c) Consideration of presiding officer's recommended decision by CHSB

As soon as practicable after the filing of the presiding officer's recommended decision, the CHSB shall consider the recommended decision of the presiding officer at a duly called meeting.

4.21 Tentative decisions

(a) Request for a tentative decision

Any party may, in advance of hearing, request in writing that the CHSB furnish it a copy of a tentative decision, if a majority of the CHSB has neither heard nor read the evidence. If such a request has been made by any party when a majority of the CHSB has neither heard nor read the evidence, a tentative decision shall be made by the CHSB which may be made on the basis of the presiding officer's recommended decision containing the matters set forth in these regulations. Unless a timely request is filed by a party to a proceeding, the CHSB need not make any tentative decision.

(b) Notice of tentative decisions

As soon as practicable after the CHSB has made its tentative decision, the chairman of the CHSB shall forward a copy thereof to any party who is entitled thereto.

(c) Filing of objections

A party shall have ten (10) days from the date of mailing of the tentative decision to submit written objections and either oral or written arguments to the CHSB, the choice to be made in the discretion of the CHSB.

4.22 Oral argument: submission for final decision

(a) Oral argument

If oral argument before the CHSB is desired on objections to a tentative decision, or on a motion or petition, a request therefor shall be made in writing to the CHSB. Any party may make such a request irrespective of his filing objections or written argument. If a brief on objections or argument is filed, the request for oral argument shall be incorporated therein. Applications for oral argument will be granted or denied in the discretion of the CHSB, and if granted, the notice of oral argument will set forth the order of presentation. Those who appear before the CHSB on oral argument shall confine their argument to points of controlling importance raised on objections. Where the facts of a case are adequately and accurately dealt with in the tentative decision, parties should, as far as possible, address themselves in argument to the conclusions.

(b) Submission to CHSB for final decision

A proceeding will be deemed submitted to the CHSB for final decision as follows:

(1) if oral argument is had, the date of completion thereof, or if memoranda on points of law are permitted to be filed after argument, the last date of such filing;

(2) if oral argument is not had, the last date when objections or written arguments or replies thereto are filed, or if objections and written arguments are not filed, the expiration date for such objections or written arguments; or

(3) if a majority of the CHSB has neither heard nor read the evidence and a timely request for an opportunity to submit written objections and either written or oral arguments has not been filed, on the date that the presiding officer files his recommended decision with the CHSB.

4.23 Quorum

At least a majority of the members of the CHSB shall participate in any action of the CHSB. All decisions and rulings of the CHSB shall be by a vote of a majority of the CHSB present.

4.24 Appeal from final decision

The CHSB shall notify all parties of their right to appeal a final decision of the CHSB pursuant to M.G.L. c.30A sec. 14 and M.G.L. c.6 sec. 176 and of the time limit on their right to appeal.

5.1 Access to records required to be kept by these regulations

Any record required to be kept by these regulations shall be open only to the CHSB, the Security and Privacy Council, and/or the individual named in the record.

I hereby certify under penalties of perjury that the above drafted document sets forth the regulations approved by the Criminal History Systems Board on December 3, 1974.

Arnold R. Rosenfeld
Chairman
Criminal History Systems Board

Commonwealth of Massachusetts
Middlesex S.S.
Then personally appeared the above named
and acknowledged the foregoing instrument
to be his free act and deed, before me.
Richard B. Gellman, Notary Public
My Commission Expires June [illegible], 1980

Research Regulations Approved by The Criminal History Systems Board Pursuant to M.G.L. Chapter 6 Section 173 on July 12, 1973

1. All individuals and agencies that require access to and/or use of criminal offender record information for purposes of research must apply to the Criminal History Systems Board for approval, except that any criminal justice agency that holds or controls criminal offender record information may utilize its records for research purposes without application to the Board. These agencies must comply with all other regulations governing research in the conduct of their research.

2. Before an individual or agency may request approval from the Board for access to and/or use of criminal offender record information for research purposes, the applicant, other than a criminal justice agency, must have a recognized private or public research organization such as a college, university, private research foundation, or a public agency that has an explicit mandate to perform research of this kind for the purpose of formulation of public policy, certify that the research project is being conducted for valid educational, scientific, or other public purposes.

3. The Board may approve an applicant's request for access to and/or use based upon the purposes for which the research is being conducted, the quality of the research project design, and the compliance with other requirements indicated below.

4. An application must provide a detailed description of the research project, and it must specify precisely the information required and the purpose for which the research project requires the data.

5. All research projects must be designed to preserve the anonymity of the individuals about whom the criminal offender record information relates.

6. The following requirements must be met and conditions accepted before the Board may permit an applicant access to and/or use of criminal offender record information.

   a. On-line access to automated systems maintaining criminal offender record information will normally be denied; access to automated systems will typically be off-line.

   b. Access to the codes, entered on an automated system, which relate identifying information to criminal offender record information, will be denied.

   c. All identifying information (e.g., name, parents' names, precise address) will be excluded from each criminal offender record that is taken except as specified in d. and e. below.

   d. In cases where the purposes of the research justify and require reference to individuals, the researcher will separate the identifying information from the rest of the criminal offender record information by assigning to the records in question an arbitrary code consisting of original, non-duplicating numbers. The key to this code will be retained by the Criminal History Systems Board and made available to the project only at those times and for those periods when it is shown to be needed to complete the designed research.

   e. When the project requires identification information for the purpose of collating records, the applicant shall develop its own arbitrary code consisting of another original, non-duplicating numbering system with its own key which shall be maintained in a secure place under the control of the project director. When the applicant's need under the designed research for the linkage of names to records ceases, its own key will be destroyed and a certification of this destruction shall be delivered to the Board.

   f. Only the project director and any officers in charge of preserving respondent anonymity, all of whom shall be specifically named in the application and by the certifying institution or agency, shall be given this access which shall be arranged under specified conditions of time and place.

6. g. The project director may not reproduce any of the data gathered from the criminal offender records except for internal purposes, nor may that person transfer the data or allow access to and/or use of it by other research groups who have not obtained permission or approval from the Board with respect to that project. Furthermore, the project director must sign written assurances that these prohibitions will be honored.

h. As a further safeguard to anonymity, each member of the research staff must complete an agreement that he will not disclose to unauthorized persons any criminal offender record information which identifies individuals. The agreement of non-disclosure shall be held by the Board and made available for public inspection.

i. At the end of the project, the researchers will be required either to return the data to the source agency or agencies or destroy it. If the project director certifies that the data may be used for a research purpose at some later date or that the criminal offender record information has been combined and stored with other data collected by the project so that its expungement would be both difficult and costly and the Board is satisfied that sufficient security measures have been taken to protect that data, the applicant will be required to return or destroy any identifying or linking information. After the termination of a project, the data shall not be reused without the approval of the Board.

j. Findings and conclusions in the publicly available research reports must be presented so that individuals cannot be identified, either by the narrow specificity of certain items of the information or the small number of units in any statistical sample.

7. The Board and the Security and Privacy Council shall have the right to inspect any research project periodically. The Board may require periodic compliance reports. The authorized researcher shall submit any report based upon the data to the Board prior to publication of the report.

8. Any person who violates these regulations may be subject to the criminal penalties of a fine of not more than five thousand dollars, or imprisonment in a jail or house of correction for not more than one year, or both, in accordance with M.G.L. c.6 sec.178. Upon the failure on the part of a research project to comply with either the statute or these regulations, the Board may a) deny access to record information in the future, b) terminate current access, and/or c) demand and secure the return of all criminal offender record information.

I hereby certify under penalties of perjury that the above drafted document sets forth the research regulations approved by the Criminal History Systems Board on July 12, 1973.

Arnold R. Rosenfeld
Chairman
Criminal History Systems Board

Commonwealth of Massachusetts
Middlesex, S.S. Date 16 August 1973
Then personally appeared the above named
Arnold R. Rosenfeld
and acknowledged the foregoing instrument
to be his free act and deed, before me,
Richard B. Gellman, Notary Public
Richard B. Gellman
My commission expires
June 27, 1980.

Commonwealth of Massachusetts
Middlesex, S.S. Date .....
Then personally appeared the above named
and acknowledged the foregoing instrument
to be his free act and deed, before me,
Richard B. Gellman, Notary Public

325.101 STATE DEPARTMENT OF HEALTH

STATE CRIME DETECTION LABORATORY

State Board and Department of Health—State Health Commissioner

Abolition of state board of health and transfer of powers and duties to state health commissioner, see section 325.4.

Transfer of powers and duties of department of health and state health commissioner to department of human services, see sections 16.527 and 16.731.

P.A.1941, No. 62, Eff. Jan. 10, 1942

AN ACT to establish a state crime detection laboratory; to provide for the coordination of state laboratory facilities; to prescribe the powers and duties of the state department of health and the Michigan state police with respect thereto; and to cooperate with law enforcement officers.

The People of the State of Michigan enact:

325.101 State crime detection laboratory; rules and regulations

Sec. 1. There is hereby established in the bureau of laboratories of the state department of health a state crime detection laboratory. The purpose of this act is to afford the several prosecuting attorneys, the attorney general, the Michigan state police and law enforcement officers of the state of Michigan facilities for examinations and analyses in matters of a criminal nature, to the end that the laws of this state may be enforced and violators brought to trial. The state commissioner of health and the commissioner of the Michigan state police, acting jointly, are hereby authorized to promulgate the necessary rules and regulations to carry out the provisions and purposes of this act.

325.102 Same; commissioner of health to organize; equipment; use; expenses

Sec. 2. It shall be the duty of the state commissioner of health to organize, equip and conduct said state crime detection laboratory. Said laboratory shall consist of personnel, apparatus and material necessary to the scientific investigation of matters of a criminal nature, and the facilities of such laboratory, including the personnel thereof, shall at all times be available for use by the several prosecuting attorneys, the attorney general, the Michigan state police and law enforcement officers. Expenses of establishing and maintaining said laboratory, and the fees of expert witnesses of such laboratory, shall be paid from the appropriation to the bureau of laboratories of the state department of health.

325.103 State laboratories to cooperate regarding violations of law

Sec. 3. It shall be the duty of the persons in charge of the laboratories of other state departments, boards, institutions and commissions to cooperate with the state crime detection laboratory established under this act, and the state crime detection laboratory shall cooperate with the laboratories of other state departments, boards, institutions and commissions, in all matters involving a violation of the laws of this state.

750.491 Removal, mutilation, or destruction of public records, penalty

Sec. 491. All official books, papers or records created by or received in any office or agency of the state of Michigan or its political subdivisions, are declared to be public property, belonging to the people of the state of Michigan. All books, papers or records shall be disposed of only as provided in section 13c of Act No. 51 of the Public Acts of the First Extra Session of 1948, as added, being section 18.13c of the Compiled Laws of 1948, section 5 of Act No. 271 of the Public Acts of 1913, as amended, being section 399.5 of the Compiled Laws of 1948 and sections 2137 and 2138 of Act No. 236 of the Public Acts of 1961, being sections 600.2137 and 600.2138 of the Compiled Laws of 1948.

Any person who shall wilfully carry away, mutilate or destroy any of such books, papers, records or any part of the same, and any person who shall retain and continue to hold the possession of any books, papers or records, or parts thereof, belonging to the aforesaid offices and shall refuse to deliver up such books, papers, records, or parts thereof to the proper officer having charge of the office to which such books, papers, or records belong, upon demand being made by such officer or, in cases of a defunct office, the Michigan historical commission, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison not more than 2 years or by a fine of not more than $1,000.00. As amended P.A.1952, No. 119, § 1, Eff. Sept. 18; P.A. 1964, No. 147, § 1, Eff. Aug. 28.

335.347 Probation without entering judgment of guilt; violation of probation; discharge and dismissal; instruction and rehabilitation programs

Sec. 47. (1) When any person who has not previously been convicted of any offense under this act or under any statute of the United States or of any state relating to narcotic drugs, coca leaves, marihuana, or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under subsection (4) of section 41 [1] or of use of a controlled substance under subsection (5) of section 41, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 48.[2] There may be only 1 discharge and dismissal under this section with respect to any person. The records and identifications division of the department of state police shall retain a nonpublic record of an arrest and discharge or dismissal under this section. This record shall be furnished to any court or police agency upon request for the purpose of showing that a defendant in a criminal action involving the use of a controlled substance covered in this act has already once availed himself of the provisions of this section.

(2) If a person is convicted of a violation of this act, the court as part of his sentence, during either the period of his confinement or the period of his probation, or both, may require him to attend a course of instruction or rehabilitation program approved by the department of public health on the medical, psychological, and social effects of the misuse of drugs. The court may order him to pay a fee, as approved by the director of public health, for the instruction or program. Failure to complete the instruction or program shall be considered a violation of the terms of his probation.

P.A.1971, No. 196, § 47, Eff. April 1, 1972. Amended by P.A.1974, No. 81, § 1, Imd. Eff. April 9.

750.492 Inspection and use of public records

Sec. 492. * * * Any officer having the custody of any county, city or township records in this state who shall when requested fail or neglect to furnish proper and reasonable facilities for the inspection and examination of the records and files in his office and for making memoranda of transcripts therefrom during the usual business hours, which shall not be less than 4 hours per day, to any person having occasion to make examination of them for any lawful purpose shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by a fine of not more than $500.00. The custodian of said records and files may make such reasonable rules * * * with reference to the inspection and examination of them as shall be necessary for the protection of said records and files, and to prevent interference with the regular discharge of the duties of such officer. The officer shall prohibit the use of pen and ink in making copies or notes of records and files in his office. No books, records and files shall be removed from the office of the custodian thereof, * * * except by the order of the judge of any court of competent jurisdiction, or in response to a subpoena duces tecum issued therefrom, or for audit purposes conducted pursuant to Act No. 71 of the Public Acts of 1919, as amended, being sections 21.41 to 21.53 of the Compiled Laws of 1948, Act No. 52 of the Public Acts of 1929, being sections 14.141 to 14.145 of the Compiled Laws of 1948 or Act No. 2 of the Public Acts of 1968, being sections 141.421 to 141.433 of the Compiled Laws of 1948 with the permission of the official having custody of the records if the official is given a receipt listing the records being removed.

Amended by P.A.1970, No. 109, § 1, Imd. Eff. July 23.

1970 Amendment. Substituted the word "rules" in lieu of the words "rules and regulations" in the second sentence, and added that part of the last sentence which begins with the words "or for audit purposes".

Substantive changes in text indicated by underline

780.222 Files and papers, period to be filed; destruction

Sec. 2. All files and papers, other than dockets and books of journal entry, relating to prosecutions for offenses arising under the charter, or any ordinance or regulation of any city in any municipal court need not be filed for a longer period than 6 years from the date of filing of the complaints thereunder, unless otherwise ordered by the court, and may then be destroyed when ordered by the court. P.A.1949, No. 66, § 2, Eff. Sept. 23, as amended P.A.1952, No. 24, § 1, Sept. 18.

780.223 Files and papers in criminal cases, period to be filed, destruction

Sec. 3. All files and papers relating to prosecutions for offenses arising under any law of this state in any municipal court shall be filed for 10 years from the date of sentence, acquittal, dismissal or other final action by the court in the cause, and may then be destroyed to such extent as is ordered by the court. P.A.1949, No. 66, § 3, added by P.A.1958, No. 150, § 1, Eff. Sept. 13, 1958.

10.112 Executive Order 1972-3 establishing state data processing centers

WHEREAS, Article V, Section 2 of the 1963 Michigan Constitution provides that the Governor may make changes in the assignment of functions among units of the Executive branch; and

WHEREAS, Act 189 of the Public Acts of 1964, being 18.5(a) of the Compiled Laws of 1948, placed within the Department of Administration the responsibility for establishing central data processing centers for the several state agencies and the responsibility to arrange for and effect the centralization and consolidation of equipment and services in order to maintain maximum utilization and efficiency; and

WHEREAS, it is recognized that in the interest of economy, efficiency, and effectiveness of government, it is necessary to effectuate changes in the internal organization of the Executive branch of government; and

WHEREAS, Executive Order 1970-13 established the Management Sciences Group, Executive Office of the Governor, and transferred the above statutory responsibilities for establishment of central data processing centers and effecting the centralization and consolidation of equipment and services to the Management Sciences Group; and

WHEREAS, the Management Sciences Group has, after detailed analysis and study, developed and published the State of Michigan Management Information System (SOMMIS) Master Plan which provides a time-phased schedule for the consolidation of state data processing facilities and provides for development of policies, plans, procedures, and standards which will lead to greater efficiency and economy in utilization of the state's data processing resources;

WHEREAS, Executive Agents responsible for operating and managing the state data centers have been appointed in Executive Directive 1971-6 and the Executive Agents, Management Sciences Group, and the supported departments and agencies have been participating in joint planning activities to assure an orderly transition to the state data center concept;

THEREFORE, I, WILLIAM G. MILLIKEN, Governor of the State of Michigan, pursuant to the authority vested in me by the provisions of Article V, Section 2, of the State Constitution of 1963, do hereby order and establish seven centralized state data processing centers as follows:

Name of Data Center	Nucleus Agency	Activation Date
Central Systems	Department of Treasury	May 8, 1972
Criminal Justice	Department of State Police	May 8, 1972
Engineering & Scientific	Department of State Highways	May 8, 1972
Education	Department of Education	May 8, 1972
Regulatory & Licensing	Department of State	May 8, 1972
Health & Welfare	Department of Social Services	November 1, 1972
Detroit	Michigan Employment Security Comm.	January 1, 1973

It is further ordered that personnel and equipment required to operate the state data centers shall be provided from current resources. As necessary, personnel from departments and agencies will be transferred to the state data centers. However, no transfer of appropriations, other than those specified in Public Acts, shall be made unless and until approval of such transfer is first recommended to the State Budget Director, and while the Legislature is in session, is authorized by concurrent resolutions or, when the Legislature is not in session, approval is then secured from the Special Commission on Appropriations created in the provisions of Act 120 of the Public Acts of 1937, as amended, being Sections 5.1 and 5.5 of the Compiled Laws of 1948.

It is further ordered that, subsequent to activation, departments and agencies of Michigan state government shall receive all required data processing support from responsible state data centers except as otherwise approved in the budgetary process or when specific exception is authorized by the Management Sciences Group.

It is further ordered that Executive Agents shall establish policy for the internal operation of their respective state data centers and shall manage these centers so as to assure that service is provided to all using departments and agencies on a fair and equitable basis. Developmental and operational priority lists shall be maintained by the Executive Agent and shall be coordinated with the serviced departments and agencies at periodic meetings of Interagency Coordinating Committees (IACC's). All data processing services provided by the state data centers shall be charged to the receiving agencies.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

(v) The judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court, is not included in the definition of public body.

(c) "Public record" means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. This act separates public records into 2 classes: (i) those which are exempt from disclosure under section 13,[1] and (ii) all others, which shall be subject to disclosure under this act.

(d) "Unusual circumstances" means any 1 or a combination of the following, but only to the extent necessary for the proper processing of a request:

(i) The need to search for, collect, or appropriately examine or review a voluminous amount of separate and distinct public records pursuant to a single request.

(ii) The need to collect the requested public records from numerous field offices, facilities, or other establishments which are located apart from the particular office receiving or processing the request.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.

P.A.1976, No. 442, § 2, Eff. April 13, 1977

[1] Section 15.243.

15.233 Inspection, copying and receipt of public records, right and opportunity; subscriptions; custodian

Sec. 3. (1) Upon an oral or written request which describes the public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of a public record of a public body, except as otherwise expressly provided by section 13.[1] A person has a right to subscribe to future issuances of public records which are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable.

(2) A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions.

(3) This act does not require a public body to make a compilation, summary, or report of information, except as required in section 11.[2]

This act does not require a public body to create a new public record, except as required in sections 5 and 11,[3] and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1),[4] of an already existing public record.

(5) The custodian of a public record shall, upon request, furnish a requesting person a certified copy of a public record.

P.A.1976, No. 442, § 3, Eff. April 13, 1977.

[1] Section 15.243.

It is further ordered that Management Sciences Group, with the advice and assistance of the Data Processing Advisory Committee established by Executive Directive 1971–3 and in coordination with the Executive Agents, shall develop and publish policies, plans, procedures, and standards applicable to the operation of the several state data centers.

It is further ordered that implementation of the provisions of this Executive Order shall not infringe upon or modify such powers, duties, and functions vested by the Constitution or statute in the State Highway Commission and the State Highway Director.

Implementation of the provisions of this Executive Order shall not infringe upon or modify the power, duties, and functions vested by the Constitution or by statute in the Secretary of State. This Order shall apply to the Secretary of State only for purposes of establishing a planning and coordinating organization to work with the Department of State in performing its role as a data center for supporting regulatory and licensing activities.

In fulfillment of the requirements of Article V, Section 2 of the Michigan Constitution, the provisions of this Order shall become effective May 1, 1972.

Executive Order No. 1972–3, February 29, 1972.

FREEDOM OF INFORMATION ACT [NEW]

Caption editorially supplied

P.A.1976, No. 442, Eff. April 13, 1977.

AN ACT to provide for public access to certain public records of public bodies; to permit certain fees; to prescribe the powers and duties of certain public officers and public bodies; to provide remedies and penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

15.231 Short title

Sec. 1. (1) This act shall be known and may be cited as the "freedom of information act".

(2) It is the public policy of this state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

P.A.1976, No. 442, § 1, Eff. April 13, 1977.

P.A.1976, No. 442, § 16, provided that it should take effect 90 days after being signed by the governor. It was ordered to take immediate effect and was approved Jan. 13, 1977.

Law Review Commentaries

Government information and the rights of citizens. 73 Mich.L.Rev. 973 (1975).

State open-records laws. 73 Mich.L.Rev. 1163 (1975).

15.232 Definitions

Sec. 2. As used in this act:

(a) "Person" means an individual, corporation, partnership, firm, organization, or association.

(b) "Public body" means:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

15.234 Fees; waiver; deposit; computation of costs; reviewal by bipartisan joint committee

Sec. 4. (1) A public body may charge a fee for providing a copy of a public record. Subject to subsection (3), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14.[1] Copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because furnishing copies of the public record can be considered as primarily benefiting the general public. A copy of a public record shall be furnished without charge for the first $20.00 of the fee for each request, to an individual who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

(2) At the time the request is made, a public body may request a good faith deposit from the person requesting the public record or series of public records, if the fee provided in subsection (1) exceeds $50.00. The deposit shall not exceed ½ of the total fee.

(3) In calculating the costs under subsection (1), a public body may not attribute more than the hourly wage of the lowest paid, full-time, permanent clerical employee of the employing public body to the cost of labor incurred in duplication and mailing and to the cost of examination, review, separation, and deletion. A public body shall utilize the most economical means available for providing copies of public records. A fee shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. A public body shall establish and publish procedures, and guidelines to implement this subsection.

(4) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or where the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

(5) Three years after the effective date of this act a bipartisan joint committee of 3 members of each house shall review the operation of this section and recommend appropriate changes. The members of the house of representatives shall be appointed by the speaker of the house of representatives. The members of the senate shall be appointed by the majority leader of the senate.
P.A.1976, No. 442, § 4, Eff. April 13, 1977.

[1] Section 15.244.

15.235 Request, oral or written, response, time; denial, explanation; extension notice; court action

Sec. 5. (1) A person desiring to inspect or receive a copy of a public record may make an oral or written request for the public record to the public body.

(2) When a public body receives a request for a public record it shall immediately, but not more than 5 business days after the day the request is received unless otherwise agreed to in writing by the person making the request, respond to the request by 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

(3) Failure to respond to a request as provided in subsection (2) constitutes a final decision by the public body to deny the request. If a circuit court, upon an action commenced pursuant to section 10,[1] finds that a public body has failed to respond as provided in subsection (2), and if the court orders the public body to disclose or provide copies of the public record or a portion thereof, then the circuit court shall assess damages against the public body as provided in section 10(4).[2]

(4) A written notice denying a request for a public record in whole or in part shall constitute a final determination by the public body to deny the request or portion thereof and shall contain:

(a) An explanation of the basis under this act or other statute for the determination that the public record, or the portion thereof, is exempt from disclosure, if that is the reason for denying the request or a portion thereof.

(b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion thereof.

(c) A description of a public record or information on a public record which is separated or deleted as provided in section 14,[3] if a separation or deletion is made.

(d) A full explanation of the requesting person's right to seek judicial review under section 10. Notification of the right to judicial review shall include notification of the right to receive attorneys' fees and damages as provided in section 10.

(5) The individual designated in section 6[4] as responsible for the denial of the request shall sign the written notice of denial.

(6) If a public body issues a notice extending the period for a response to the request, the notice shall set forth the reasons for the extension and the date by which the public body shall do 1 of the following:

(a) Grant the request.

(b) Issue a written notice to the requesting person denying the request.

(c) Grant the request in part and issue a written notice to the requesting person denying the request in part.

(7) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion thereof, the requesting person may commence an action in circuit court, as provided in section 10.
P.A.1976, No. 442, § 5, Eff. April 13, 1977.

[1] Section 15.240.
[2] Section 15.240(4).
[3] Section 15.244.
[4] Section 15.236.

15.236 Chief administrative officer or chairperson of county board; responsibility for denial

Sec. 6. (1) For a public body which is a city, village, township, county, or state department, or under the control thereof, the chief administrative officer of that city, village, township, county, or state department, or an individual designated in writing by that chief administrative officer, shall be responsible for approving a denial under section 5(4) and (5).[1] In a county not having an executive form of government, the chairperson of the county board of commissioners shall be considered the chief administrative officer for purposes of this subsection.

(2) For all other public bodies, the chief administrative officer of the respective public body, or an individual designated in writing by that chief administrative officer, shall be responsible for approving a denial under section 5(4) and (5).
P.A.1976, No. 442, § 6, Eff. April 13, 1977.

[1] Section 15.235(4), (5).

15.240 Denial, final determination; action to compel disclosure; venue; attorney fees, cost and disbursements; punitive damages

Sec. 10. (1) If a public body makes a final determination to deny a request or a portion thereof, the requesting person may commence an action in the circuit court to compel disclosure of the public records. If the court determines that the public records are not exempt from disclosure, the court shall order the public body to cease withholding or to produce a public record or a portion thereof wrongfully withheld, regardless of the location of the public record. The circuit court for the county in which the complainant resides or has his principal place of business, or the circuit court for the county in which the public record or an office of the public body is located shall have jurisdiction to issue the order. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(2) An action under this section arising from the denial of an oral request may not be commenced unless the requesting person confirms the oral request in writing not less than 5 days before commencement of the action.

(3) An action commenced pursuant to this section and appeals therefrom shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(4) If a person asserting the right to inspect or to receive a copy of a public record or a portion thereof prevails in an action commenced pursuant to this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person prevails in part, the court may in its discretion award reasonable attorneys' fees, costs, and disbursements or an appropriate portion thereof. The award shall be assessed against the public body liable for damages under subsection (4).

(5) In an action commenced pursuant to this section, if the circuit court finds that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall, in addition to any actual or compensatory damages, award punitive damages in the amount of $500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body, not an individual, pursuant to whose public function the public record was kept or maintained.

P.A.1976, No. 442, § 10, Eff. April 13, 1977.

15.241 State agencies; available items

Sec. 11. (1) A state agency shall publish and make available to the public all of the following:

(a) Final orders or decisions in contested cases and the records on which they were made.

(b) Promulgated rules.

(c) Other written statements which implement or interpret laws, rules, or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions.

(2) Publications may be in pamphlet, loose-leaf, or other appropriate form in printed, mimeographed, or other written matter.

(3) Except to the extent that a person has actual and timely notice of the terms thereof, a person shall not in any manner be required to resort to, or be adversely affected by, a matter required to be published and made available, if the matter is not so published and made available.

(4) This section does not apply to public records which are exempt from disclosure under section 13.[1]

(5) A person may commence an action in the circuit court to compel a state agency to comply with this section. If the court determines that the state agency has

failed to comply, the court shall order the state agency to comply and shall award reasonable attorneys' fees, costs, and disbursements to the person commencing the action. The circuit court for the county in which the state agency is located shall have jurisdiction to issue the order.

(6) As used in this section, "state agency", "contested case", and "rules" shall have the same meanings as ascribed to those terms in Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. P.A.1976, No. 442, § 11, Eff. April 13, 1977.

[1] Section 15.243.

15.243 Items exempt from disclosure

Sec. 13. (1) A public body may exempt from disclosure as a public record under this act:

(a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of personal privacy.

(iv) Disclose the identity of a confidential source, or if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(v) Disclose law enforcement investigative techniques or procedures.

(vi) Endanger the life or physical safety of law enforcement personnel.

(c) A public record which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(d) Records or information specifically described and exempted from disclosure by statute.

(e) Information the release of which would prevent the public body from complying with 20 U.S.C. section 1232g.

(f) A public record or information described in this section which is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

(g) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(i) The information is submitted upon a promise of confidentiality by the public body.

(ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision shall not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

(h) Information or records subject to the attorney-client privilege.

(i) Information or records subject to the physician-patient, psychologist-patient, minister, priest or Christian science practitioner, or other privilege recognized by statute or court rule.

(j) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the time for the receipt of bids or proposals has expired.

(k) Appraisals of real property to be acquired by the public body until (i) an agreement is entered into; or (ii) 3 years has elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.

(l) Test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.

(m) Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.

(n) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of Act No. 267 of the Public Acts of 1976, being section 15.268 of the Michigan Compiled Laws. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under Act No. 336 of the Public Acts of 1947, as amended, being sections 423.201 to 423.216 of the Michigan Compiled Laws.

(o) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, which if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular instance.

(p) Information which would reveal the exact location of archeological sites. The secretary of state may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws to provide for the disclosure of the location of archeological sites for purposes relating to the preservation or scientific examination of sites.

(q) Testing data developed by a public body in determining whether bidders' products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision shall not apply after 1 year has elapsed from the time the public body completes the testing.

(r) Academic transcripts of an institution of higher education established under sections 5, 6 or 7 of article 8 of the state constitution of 1963, where the record pertains to a student who is delinquent in the payment of financial obligations to the institution.

(s) Records of any campaign committee including any committee that receives monies from a state campaign fund.

(t) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a police or sheriff's agency or department, the release of which would do any of the following:

(i) Identify or provide a means of identifying an informer.

(ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.

(iii) Disclose the personal address or telephone number of law enforcement officers or agents or any special skills that they may have.

(iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of law enforcement officers or agents.

(v) Disclose operational instructions for law enforcement officers or agents.

(vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

(viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informer.

(ix) Disclose personnel records of law enforcement agencies.

(x) Identify or provide a means of identifying residences which law enforcement agencies are requested to check in the absence of their owners or tenants.

(2) This section does not authorize the withholding of information otherwise required by law to be made available to the public, or to a party in a contested case under Act No. 306 of the Public Acts of 1969, as amended.[1]

P.A.1976, No. 442, § 13, Eff. April 13, 1977.

[1] Section 24.201 et seq.

15.244 Exempt and nonexempt material, separation

Sec. 14. (1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

(2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

P.A.1976, No. 442, § 14, Eff. April 13, 1977.

[1] Section 15.243.

LAW ENFORCEMENT INFORMATION NETWORK POLICY COUNCIL ACT OF 1974 [NEW]

Caption editorially supplied

P.A.1974, No. 163, Eff. April 1, 1975

AN ACT to provide for the creation of a law enforcement information network policy council; to provide for the establishment of policy and promulgation of rules governing the use of the law enforcement information network; and to provide for the appointment and compensation of council members.

The People of the State of Michigan enact:

28.211 Short title

Sec. 1. This act shall be known and may be cited as the "L.E.I.N. policy council act of 1974".

P.A.1974, No. 163, § 1, Eff. April 1, 1975.

28.212 Council, creation, membership

Sec. 2. There is created the law enforcement information network policy council, hereafter referred to as the council, comprised of the following members:

(a) The attorney general, or his designated representative.

(b) The secretary of state, or his designated representative.

(c) The director of the department of corrections, or his designated representative.

(d) The commissioner of the Detroit police department, or his designated representative.

(e) Three representatives of the department of state police, to be appointed by the director of the department of state police.

(f) Three representatives of the Michigan association of chiefs of police, to be appointed annually by that association.

(g) Three representatives of the Michigan sheriffs' association, to be appointed annually by that association.

(h) Three representatives of the prosecuting attorneys association of Michigan to be appointed annually by that association.

P.A.1974, No. 163, § 2, eff. April 1, 1975.

28.213 Meetings; officers; compensation

Sec. 3. (1) The council shall, at its first meeting, elect from its membership a chairman, who shall serve for 1 year. Elections thereafter shall be held annually. A chairman may, if reelected, succeed himself. The council shall meet quarterly, during the months of January, April, July, October, and at other times the chairman deems necessary.

(2) Council members shall serve without compensation, but shall be entitled to actual expenses incurred during attendance at a regular or special council meeting and in traveling to and from a meeting.

P.A.1974, No. 163, § 3, Eff. April 1, 1975.

28.214 Duties of council

Sec. 4. The council shall:

(a) Establish policy and promulgate rules regarding the operational procedures to be followed by agencies using the law enforcement information network.

(b) Review applications for network terminals and approve or disapprove the applications and the sites for terminal installations. If an application is disapproved, the applicant shall be notified in writing of the reasons for disapproval.

(c) Establish minimum standards for terminal sites and installation.

P.A.1974, No. 163, § 4, Eff. April 1, 1975.

28.215 Removal of terminals

Sec. 5. The council may remove terminals if the agency or entity controlling the terminal fails to comply with the established policies or promulgated rules of the council.

P.A.1974, No. 163, § 5, Eff. April 1, 1975.

28.216 Hardware or software purchases, approval

Sec. 6. The council shall not approve any purchase of hardware or software from federal or state funds without the approval of the joint committee on computers.

P.A.1974, No. 163, § 6, Eff. April 1, 1975.

28.243a Refusing to allow fingerprinting; advising that refusal constitutes misdemeanor

Sec. 3a. Any person required to have his fingerprints taken under section 3 1 who refuses to allow or resists the taking of his fingerprints is guilty of a misdemeanor. Such person must be advised that his refusal constitutes a misdemeanor.

P.A.1925, No. 289, § 3a, added by P.A.1968, No. 174, § 1, Eff. Nov. 15, 1968.

AN ACT to create a bureau of criminal identification, records and statistics within the department of public safety; to provide for a director thereof; to prescribe his duties; to require peace officers, persons in charge of certain institutions and others, to make reports respecting crimes and criminals to such bureau and to provide a penalty for violation of the provisions thereof. As amended P.A.1931, No. 197, Imd. Eff. May 28.

The People of the State of Michigan enact:

28.241 Bureau of criminal identification, records and statistics

Sec. 1. A bureau of criminal identification, records and statistics is hereby created under the supervision of the department of public safety. The commissioner of public safety shall appoint a person to have direction and control of such bureau, in the same manner as other deputies, assistants and employes of such department are appointed. Such bureau shall be supplied with necessary apparatus and materials for collecting, filing and preserving criminal records filed with the bureau.

28.242 Same; duties of director

Sec. 2. The director of such bureau shall procure and file for record, photographs, pictures, descriptions, finger prints, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of a felony or of a misdemeanor not cognizable by a justice of the peace within the state and also of all well known and habitual criminals wheresoever the same may be procured. The director of such bureau shall collect information concerning the number and nature of offenses known to have been committed in this state, of the legal steps taken in connection therewith from the inception of the complaint to the final discharge of the defendant, and such other information as may be useful in the study of crime and the administration of justice; this information to comprise only such crimes, legal steps, and information as the director of the bureau may designate. The information so collected shall include such data as may be required by the United States department of justice at Washington under its national system of crime reporting. It shall be the duty of the director to provide all reporting officials with forms and instructions which specify in detail the nature of the information required, the time it is to be forwarded, the method of classifying, and such other matters as shall facilitate its collection and compilation. The director shall also cooperate with and assist sheriffs, chiefs of police and other law officers in the establishment of a complete state system of criminal identification and in obtaining finger prints and other means of identification of all persons arrested on a complaint of felony or of a misdemeanor not cognizable by a justice of the peace. He shall also file for record the finger print impressions of all persons confined in any workhouse, jail, reformatory, penitentiary or other penal institution.

officer is designated by the director as the person to whom the information is to be reported, it shall be the duty of the appropriate officials to report such information to him. The county officer so designated shall compile this information in such manner as the director may determine and forward a consolidated report to the director.

Same; exceptions to obligation to return. The provisions of this section requiring the return of the fingerprints, arrest card and description shall not apply (1) where the person arrested has any prior conviction excepting misdemeanor traffic offenses or (2) where the person arrested was charged with the commission or attempted commission, with or against a child under the age of 16 years, of the crime of rape, sodomy, gross indecency, or indecent liberties unless a judge of any court of record, excepting the probate court, by express order entered of record, orders the return. As amended P.A.1951, No. 99, § 1, Eff. Sept. 28; P.A.1958, No. 92, § 1, Eff. Sept. 13; P.A.1959, No. 176 § 1, Eff. March 19, 1960.

28.244 Cooperation with state and national bureaus

Sec. 4. It shall be the duty of the director to cooperate with the bureaus in other states and with the national bureau in the department of justice in Washington, to develop and carry on a complete interstate, national and international system of criminal identification, records and statistics.

28.245 Same; local bureaus

Sec. 5. It shall be the duty of the superintendent to offer assistance and when practicable, instruction, to sheriffs, chiefs of police and other peace officers in establishing an efficient local bureau of identification in their districts.

28.246 Penalty

Sec. 6. Neglect or refusal of any of the officers herein mentioned, to make the report required herein or to do or perform any other act on his part to be done or performed, shall constitute a misdemeanor and such officer shall upon conviction thereof, be punished by a fine of not less than 5 nor more than 25 dollars, or by imprisonment in the county jail for a period of not exceeding 30 days or by both such fine and imprisonment in the discretion of the court. Such neglect or refusal shall also constitute nonfeasance in office and subject the officer to removal from office.

28.243 Fingerprints and description of persons arrested; return upon release or acquittal

Sec. 3. It is hereby made the duty of the sheriffs of the several counties of this state, chiefs of police of the cities, and village marshals, immediately upon the arrest of any person for a felony or of a misdemeanor not cognizable by a justice of the peace, to take his fingerprints, in duplicate, 1 set of fingerprints, according to the fingerprint system of identification established by the director of said bureau and on forms furnished by him, and 1 set of fingerprints according to the fingerprint system of identification established by the director of the federal bureau of investigation at Washington, D. C., on forms furnished by him, and forward the same, together with such other descriptions and information as may be required to such bureaus for filing and classification. Should any person accused thereafter be released without a charge made against him, it shall be the mandatory duty of the official taking or holding any accused's fingerprints, arrest card and description to return same forthwith without the necessity of a request therefor. If not so returned, the accused so released shall have the absolute right to demand and receive such return at any time after such release and without need to petition for court action. Should any accused thereafter be found not guilty of the offense charged against him, the arrest card, the fingerprints and description shall be returned to him by a court order signed by the trial court and directed to the official holding same, which order shall issue automatically upon such finding of not guilty without the necessity of request therefor. If for any reason such order of return shall not issue upon a finding of not guilty, the accused shall have the absolute right to such return, upon request, at any time after such acquittal. Should such order of return be refused such acquitted, the accused shall have the right to petition the circuit court of the county wherein the original charge was made for a preemptory writ of mandamus to require issuance of such order of return. It is hereby made the duty of the clerk of any court, the arresting officer, or such other official as the director may designate, to immediately advise the director of the bureau and the director of the federal bureau of investigation the final disposition of the arrest for which the accused was fingerprinted. The director shall compare the fingerprints and description received with those already on file in the bureau and if he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the arresting officer of such fact. It shall be the duty of every police department, sheriff, constable or other police agency; of clerks, justices, or other appropriate official for all criminal courts; of prosecuting, probation and parole officers; of every head of a department, board, commission, bureau or institution of the state or any political subdivision thereof, having to do directly or indirectly with crime or criminals; or of any other person who by reason of his office is qualified to furnish the data required, to render to the director the information required in conformity with section 2 hereof:[1] Provided, That where the sheriff or other county

28.247 Reports by sheriffs and police chiefs as to persons accused of sexually motivated crimes; confidential filing system, penalty

Sec. 7. The sheriff of every county and the chief executive officer of the police department of every city, village and township shall make such reports of accused persons against whom a warrant has been issued and the disposition thereof in sexually motivated crimes verified as such and the disposition of cases resulting therefrom to the commissioner as he may require on forms provided by him. The commission-

28.262 Bureau of identification; files, supplies

Sec. 2. It shall be the duty of the bureau of identification to install and maintain a filing system for the purpose of recording and preserving the various impressions received by it by virtue of the terms of this act, said filing system to be separated from the system now employed by the bureau for the recording and preserving of finger-print impressions of criminals. The equipment and supplies for the proper carrying out of this act shall be furnished by the department of public safety.

28.272 Filing system, purpose; equipment and supplies

Sec. 2. It shall be the duty of the bureau of identification to install and maintain a filing system for the purpose of recording and preserving the various impressions received by it by virtue of the terms of this act, said filing system to be distinguished from the system now employed by the bureau for the recording and preserving of fingerprints of criminals. The equipment and supplies for the proper carrying out of this act shall be furnished by the department of public safety.

UNIFORM CRIME REPORTING SYSTEM [NEW]

Caption editorially supplied

Library References

Criminal Law ⇐1222. C.J.S. Criminal Law § 2008 et seq.

P.A.1968, No. 319, Imd. Eff. July 3

AN ACT to provide a uniform crime reporting system; to provide for the submitting of such report to the department of state police; to require submission of the report by certain police agencies; to require the reporting on wanted persons and stolen vehicles; and to vest the director of the department of state police with the authority to prescribe the reporting form and its content.

The People of the State of Michigan enact:

28.251 Crime report; date, form, contents

Sec. 1. The police department of each city or village, any duly constituted police department of a township, and the sheriff's department of each county, one each month upon a date and form prescribed and furnished by the director of the department of state police, shall forward to the department of state police a crime report. Each reporting department shall report only on cases within its jurisdiction and upon which it is making, or has made, the primary police investigation. The report shall be called the uniform crime report and shall cover crimes reported and otherwise processed during the month preceding the month of the report. It shall contain the number and nature of offenses committed, the disposition of such offenses and such other information as the director of state police shall specify relating to the method, frequency, cause and prevention of crime. Under no circumstances shall the name of any person be reported.
P.A.1968, No. 319, § 1, Imd. Eff. July 3.

Notes of Decisions

1. In general

Prosecuting attorney would not be prohibited from providing access to criminal records to news media representatives for general publication, except for records concerning persons accused of sexually motivated crimes. Op.Atty.Gen.1969, No. 4683, p. 101.

28.252 Statewide statistical compilation; availability to governmental law enforcement agencies; purpose

Sec. 2. Upon receipt of the monthly uniform crime reports from the reporting agencies, the department of state police shall prepare a statewide compilation of the statistics contained therein and the resulting statistical compilation shall be available to any governmental law enforcement agency in the state, the judiciary committees of the Michigan state senate and the Michigan state house of representatives, and the federal bureau of investigation, upon request. The statistics made available through the uniform crime report shall be used for the purpose of studying the causes, trends and effects of crime in this state and for intelligence upon which to base a more sound program of crime detection and prevention and the apprehension of criminals.
P.A.1968, No. 319, § 2, Imd. Eff. July 3.

28.253 Reports by governmental police agencies not required to submit reports

Sec. 3. Any governmental police agency, not falling within the description of those required to submit the monthly uniform crime report set forth in section 1,[1] which desires to submit such a report, shall be furnished with the proper forms by the department of state police. When a report is received by the department of state police from a governmental police agency not required to make such report, the information contained therein shall be included within the monthly compilation provided for in section 2.[2]
P.A.1968, No. 319, § 3, Imd. Eff. July 3.

[1] Section 28.251.
[2] Section 28.252.

28.254 Reports by governmental police agencies required to submit report; time to make reports

Sec. 4. The chief of police of each city or village and of each township having a police department, and the sheriff of each county within this state, shall report to the department of state police, in a manner prescribed by the department, all persons wanted by, and all vehicles stolen from, their primary police jurisdictions. The report shall be made as soon as is practical after the investigating department either ascertains that a vehicle is stolen or obtains a warrant for an individual's arrest or determines that they have reasonable grounds to believe that the individual committed a crime. In no case shall this time exceed 12 hours after the reporting agency determines that it has grounds to believe that a vehicle was stolen or that the wanted person should be arrested.
P.A.1968, No. 319, § 4, Imd. Eff. July 3.

28.255 Notification to state police when wanted person no longer wanted

Sec. 5. When at any time after making a report required by section 4 [1] it is determined by the reporting agency that a person is no longer wanted because of his apprehension, or any other factor, and when a vehicle reported stolen under section 4 is recovered, the chief of police or sheriff of the reporting agency shall immediately notify the department of state police in a manner prescribed by the department.
P.A.1968, No. 319, § 5, Imd. Eff. July 3.

[1] Section 28.254.

28.256 Application of act; construction

Sec. 6. The provisions of this act do not apply to misdemeanor traffic cases or to persons wanted for misdemeanor traffic offenses, or for the violation of any city, village or township ordinance. The provisions of this act shall not be construed to in any way affect existing or future laws and procedures governing the reporting of persons wanted for traffic law violations or for the violation of city, village or township ordinances.
P.A.1968, No. 319, § 6, Imd. Eff. July 3.

FINGERPRINTING INMATES STATE INSTITUTIONS

28.261 Fingerprinting of inmates of insane, penal or correctional institutions

Sec. 1. A person entering into and each and every person now confined in a * * * penal or correctional institution shall be required to have an impression of his fingerprints made. It shall be the duty of the superintendent of the admitting or confining institution to see that the provisions of this section are complied with and that at least 2 copies of the impression are made, 1 for the files of the institution and the other to be forwarded to the department of state police.

Amended by P.A.1973, No. 88, § 1, Imd. Eff. Aug. 5.

1973 Amendment. Substituted "a" for "any state institution for the insane, feeble-minded or epileptic or" preceding "penal or correctional institution" in the first sentence and "department of state police" for "bureau of identification of the department of public safety" in the second sentence.

AN ACT to provide for an official personal identification card; to provide for its form, issuance and use; to provide for certain duties of the secretary of state; and to prescribe certain penalties for violations. Amended by P.A. 1975, No. 307, § 1, Eff. Jan. 1, 1976.

The People of the State of Michigan enact:

28.291 Applications for cards, qualifications of applicants, evidence as to age or identification

Sec. 1. A person * * * who is a resident of this state may apply to the department of state for an official state personal identification card. Upon application the applicant shall supply * * * a birth certificate attesting to his age or other sufficient documents or identification as the secretary of state may require. P.A.1972, No. 222, § 1, Imd. Eff. July 25. Amended by P.A.1975, No. 307, § 1, Eff. Jan. 1, 1976.

1975 Amendment. Removed restrictions as to age and voter registration for those qualified to obtain cards, and added residency qualifications. Deleted the word "police" as descriptive of the card.

P.A.1975, No. 307, § 2 provided that the act should take effect Jan. 1, 1976. It was ordered to take immediate effect and was approved Dec. 22, 1975.

28.292 Form of card; fees, original and duplicate cards, disposition

Sec. 2. The official state * * * personal identification card which shall * * * include an identification number similar to a driver's license identification number shall be in a form prescribed and provided by the secretary of state and shall be issued only upon his authorization. A fee of $3.00 shall be paid to the secretary of state by the applicant for each identification card issued. An official state personal identification card shall expire on the birthday of the person to whom it is issued in the fourth year following the date of issuance and shall not be issued for a period greater than 4 years. An official state personal identification card may be renewed within 3 months before the expiration of the card upon application and payment of a $1.50 fee. If an identification card issued under this act is lost, destroyed, or mutilated, or becomes illegible, the person to whom the same was issued may obtain a duplicate upon the payment of $1.50 fee and upon furnishing proof satisfactory to the secretary of state that the card has been lost, destroyed, or mutilated, or has become illegible. The fees received and collected under this act shall be deposited by the secretary of state in the state treasury to the credit of the general fund. The legislature shall appropriate for the administration of this act.

P.A.1972, No. 222, § 2, Imd. Eff. July 25. Amended by P.A. 1975, No. 307, § 1, Eff. Jan. 1, 1976.

1975 Amendment. Deleted "police" as descriptive of the card. Added the identification number requirement. Substituted the "secretary of state" for the "director of the department of state police" as the authority providing for the form.

For effective date provision of P.A.1975, No. 307, see note following § 28.291.

28.293 False representations in applications, unauthorized making, altering, or duplicating card, improper presentation or retention of another's card, misdemeanor

Sec. 3. A person who shall falsely represent information upon application for an official state * * * personal identification card, a person other than one authorized by the secretary of state, who makes, alters, or duplicates an official state personal identification card, a person who presents an official state * * * personal identification card of another as proof of identification, or a person who retains or secrets an official state personal identification card without the consent of the legal applicant, is guilty of a misdemeanor.

P.A.1972, No. 222, § 3, Imd. Eff. July 25. Amended by P.A.1975, No. 307, § 1, Eff. Jan. 1, 1976.

1975 Amendment. Deleted "police" as descriptive of the card.

For effective date provision of P.A.1975, No. 307, see note following § 28.291.

28.294 Fraud or misrepresentation in use of card to obtain money, property, or services, felony, forfeiture of card

Sec. 4. A person who knowingly uses, or causes to be used, an official state * * * personal identification card with the intent of defrauding or misrepresentation for the purpose of obtaining money, goods, property, or services, is guilty of a felony. An official state personal identification card used or displayed during the commission of such a crime shall be forfeited to the secretary of state * * *.

P.A.1972, No. 222, § 4, Imd. Eff. July 25. Amended by P.A.1975, No. 307, § 1, Eff. Jan. 1, 1976.

299C.05 Division of criminal statistics

There is hereby established within the bureau a division of criminal statistics, and the superintendent, within the limits of membership herein prescribed, shall appoint a qualified statistician and one assistant to be in charge thereof. It shall be the duty of this division to collect, and preserve as a record of the bureau, information concerning the number and nature of offenses known to have been committed in the state, of the legal steps taken in connection therewith from the inception of the complaint to the final discharge of the defendant, and such other information as may be useful in the study of crime and the administration of justice. The information so collected and preserved shall include such data as may be requested by the United States department of justice, at Washington, under its national system of crime reporting.

299C.06 Division powers and duties; local officers to cooperate

It shall be the duty of all sheriffs, chiefs of police, city marshals, constables, prison wardens, superintendents of insane hospitals, reformatories and correctional schools, probation and parole officers, school attendance officers, coroners, county attorneys, court clerks, the liquor control commissioner, the commissioner of highways, and the state fire marshal to furnish to the division statistics and information regarding the number of crimes reported and discovered, arrests made, complaints, informations, and indictments, filed and the disposition made of same, pleas, convictions, acquittals, probations granted or denied, receipts, transfers, and discharges to and from prisons, reformatories, correctional schools, and other institutions, paroles granted and revoked, commutation of sentences and pardons granted and rescinded, and all other data useful in determining the cause and amount of crime in this state and to form a basis for the study of crime, police methods, court procedure, and penal problems. Such statistics and information shall be furnished upon the request of the division and upon such forms as may be prescribed and furnished by it. The division shall have the power to inspect and prescribe the form and substance of the records kept by those officials from which the information is so furnished.

299C.09 System for identification of criminals; records and indexes

The bureau shall install systems for identification of criminals, including the finger-print system, the modus operandi system, and such others as the superintendent deems proper. The bureau shall keep a complete record and index of all information received in convenient form for consultation and comparison. The bureau shall obtain from wherever procurable and file for record finger and thumb prints, measurements, photographs, plates, outline pictures, descriptions, modus operandi statements, or such other information as the superintendent considers necessary, of persons who have been or shall hereafter be convicted of a felony, gross misdemeanor, or an attempt to commit a felony or gross misdemeanor, within the state, or who are known to be habitual criminals. To the extent that the superintendent may determine it to be necessary, the bureau shall obtain like information concerning persons convicted of a crime under the laws of another state or government, the central repository of this records system is the bureau of criminal apprehension in St. Paul.

Amended by Laws 1957, c. 790, § 1; Laws 1969, c. 9, § 92, eff. Feb. 12, 1969.

299C.10 Identification data

It is hereby made the duty of the sheriffs of the respective counties and of the police officers in cities of the first, second, and third classes, under the direction of the chiefs of police in such cities, to take or cause to be taken immediately finger and thumb prints, photographs, and such other identification data as may be requested or required by the superintendent of the bureau; of all persons arrested for a felony, gross misdemeanor, of all juveniles committing felonies as distinguished from those committed by adult offenders, of all persons reasonably believed by the arresting officer to be fugitives from justice, of all persons in whose possession, when arrested, are found concealed firearms or other dangerous weapons, burglar tools or outfits, high-power explosives, or articles, machines, or appliances useable for an unlawful purpose and reasonably believed by the arresting officer to be intended for such purposes, and within 24 hours thereafter to forward such finger-print records and other identification data on such forms and in such manner as may be prescribed by the superintendent of the bureau of criminal apprehension.

Amended by Laws 1957, c. 790, § 2.

299C.11 Prints, furnished to bureau by sheriffs and chiefs of police

The sheriff of each county and the chief of police of each city of the first, second, and third classes shall furnish the bureau, upon such form as the superintendent shall prescribe, with such finger and thumb prints, photographs, and other identification data as may be requested or required by the superintendent of the bureau, which may be taken under the provisions of section 299C.10, of persons who shall be convicted of a felony, gross misdemeanor, or who shall be found to have been convicted of a felony or gross misdemeanor, within ten years next preceding their arrest. Upon the determination of all pending criminal actions or proceedings in favor of the arrested person, he shall, upon demand, have all such finger and thumb prints, photographs, and other identification data, and all copies and duplicates thereof, returned to him, provided it is not established that he has been convicted of any felony, either within or without the state, within the period of ten years immediately preceding such determination.

Amended by Laws 1957, c. 790, § 3.

299C.12 Records kept by peace officers; reports

Every peace officer shall keep or cause to be kept a permanent written record, in such form as the superintendent may prescribe, of all felonies reported to or discovered by him within his jurisdiction and of all warrants of arrest for felonies and search warrants issued to him in relation to the commission of felonies, and shall make or cause to be made to the sheriff of the county and the bureau reports of all such crimes, upon such forms as the superintendent may prescribe, including a statement of the facts and a description of the offender, so far as known, the offender's method of operation, the action taken by the officer, and such other information as the superintendent may require.

Amended by Laws 1959, c. 409, § 1.

299C.13 Information as to criminals to be furnished by bureau to peace officers

Upon receipt of information data as to any arrested person, the bureau shall immediately ascertain whether the person arrested has a criminal record or is a fugitive from justice, and shall at once inform the arresting officer of the facts ascertained. Upon application by any sheriff, chief of police, or other peace officer in the state, or by an officer of the United States or by an officer of another state, territory, or government duly authorized to receive the same and effecting reciprocal interchange of similar information with the division, it shall be the duty of the bureau to furnish all information in its possession pertaining to the identification of any person.

299C.14 Officers of penal institutions to furnish bureau with data relating to released prisoners

It shall be the duty of the officials having charge of the penal institutions of the state or the release of prisoners therefrom to furnish to the bureau, as the superintendent may require, finger and thumb prints, photographs, identification data, modus operandi reports, and criminal records of prisoners heretofore, now, or hereafter confined in such penal institutions, together with the period of their service and the time, terms, and conditions of their discharge.

299C.15 Bureau to cooperate with other criminal identification organizations

The bureau shall cooperate and exchange information with other organizations for criminal identification, either within or without the state, for the purpose of developing, improving, and carrying on an efficient system for the identification and apprehension of criminals.

299C.16 Bureau to broadcast information to peace officers

The bureau shall broadcast, by mail, wire, and wireless, to peace officers such information as to wrongdoers wanted, property stolen or recovered, and other intelligence as may help in controlling crime.

299C.17 Reports to bureau by clerks of court

The superintendent shall have power to require the clerk of court of any county to file with the department, at such time as the superintendent may designate, a report, upon such form as the superintendent may prescribe, furnishing such information as he may require with regard to the prosecution and disposition of criminal cases. A copy of the report shall be kept on file in the office of the clerk of court.

299C.18 Reports

Biennially, on or before November 15, in each even-numbered year the superintendent shall submit to the governor and the legislature a detailed report of the operations of the bureau, of information about crime and the handling of crimes and criminals by state and local officials collected by the bureau, and his interpretations of the information, with his comments and recommendations. In such reports he shall, from time to time, include his recommendations to the legislature for dealing with crime and criminals and information as to conditions and methods in other states in reference thereto, and shall furnish a copy of such report to each member of the legislature. . . .

Amended by Laws 1955, c. 847, § 29; Laws 1969, c. 540, § 14, eff. May 22, 1969.

299C.21 Penalty on local officers refusing information

If any public official charged with the duty of furnishing to the bureau finger-print records, reports, or other information required by sections 299C.06, 299C.10, 299C.11, 299C.17, shall neglect or refuse to comply with such requirement, the bureau, in writing, shall notify the state, county, or city officer charged with the issuance of a warrant for the payment of the salary of such official. Upon the receipt of the notice the state, county, or city official shall withhold the issuance of a warrant for the payment of the salary or other compensation accruing to such officer for the period of 30 days thereafter until notified by the bureau that such suspension has been released by the performance of the required duty.

15.161 Acceptance of federal lands or buildings; consultation with legislative committees

The head of a state department or agency shall consult with the chairman of the house appropriations committee and the chairman of the senate finance committee before accepting any federal land or buildings thereon or any interest therein which is declared surplus by federal authorities and obtaining a recommendation thereon which shall be advisory only. Failure to obtain a recommendation thereon promptly shall be deemed a negative recommendation.

15.162 Collection, security and dissemination of records; definitions

Subdivision 1. As used in sections 15.162 to 15.168 the terms defined in this section have the meanings given them.

Subd. 1a. "Arrest information" shall include (a) the name, age, and address of an arrested individual; (b) the nature of the charge against the arrested individual; (c) the time and place of the arrest; (d) the identity of the arresting agency; (e) information as to whether an individual has been incarcerated and the place of incarceration. "Arrest information" does not include data specifically made private, confidential or nonpublic pursuant to section 260.161 or any other statute.

Subd. 2. "Commissioner" means the commissioner of the department of administration.

Subd. 2a. "Confidential data on individuals" means data which is: (a) made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data; or (b) collected by a civil or criminal investigative agency as part of an active investigation undertaken for the purpose of the commencement of a legal action, provided that the burden of proof as to whether such investigation is active or in anticipation of a legal action is upon the agency. Confidential data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration. The provision of clause (b) shall terminate and cease to have force and effect with regard to the state agencies, political subdivisions, statewide systems, covered by the ruling, upon the

granting or refusal to grant an emergency classification pursuant to section 15.1642 of both criminal and civil investigative data, or on June 30, 1977, whichever occurs first.

Subd. 3. "Data on individuals" includes all records, files and processes which contain any data in which an individual is or can be identified and which is kept or intended to be kept on a permanent or temporary basis. It includes that collected, stored, and disseminated by manual, mechanical, electronic or any other means. Data on individuals includes data classified as public, private or confidential.

Subd. 4. "Individual" means a natural person. In the case of a minor individual under the age of 18, "individual" shall mean a parent or guardian acting in a representative capacity, except where such minor individual indicates otherwise.

Subd. 5. "Political subdivision" includes counties, municipalities, school districts and any boards, commissions, districts or authorities created pursuant to local ordinance. It includes any nonprofit corporation which is a community action agency organized to qualify for public funds, or any nonprofit social service agency which performs services under contract to any political subdivision, statewide system or state agency, to the extent that the nonprofit social service agency or nonprofit corporation collects, stores, disseminates, and uses data on individuals because of a contractual relationship with state agencies, political subdivisions or statewide systems.

Subd. 5a. "Private data on individuals" means data which is made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of that data. Private data on individuals does not include arrest information that is reasonably contemporaneous with an arrest or incarceration.

Subd. 5b. "Public data on individuals" means data which is accessible to the public in accordance with the provisions of section 15.17.

Subd. 6. "Responsible authority" at the state level means any office established by law as the body responsible for the collection and use of any set of data on individuals or summary data. "Responsible authority" in any political subdivision means the person designated by the governing board of that political subdivision, unless otherwise provided by state law. With respect to statewide systems, "responsible authority" means the state official involved, or if more than one state official, the official designated by the commissioner.

Subd. 7. "State agency" means the state, the university of Minnesota, and any office, officer, department, division, bureau, board, commission, authority, district or agency of the state.

Subd. 8. "Statewide system" includes any record-keeping system in which data on individuals is collected, stored, disseminated and used by means of a system common to one or more state agencies or more than one of its political subdivisions or any combination of state agencies and political subdivisions.

Subd. 9. "Summary data" means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable.

Laws 1974, c. 479, § 1. Amended by Laws 1975, c. 401, § 1, eff. June 6, 1975; Laws 1976, c. 239, § 2; Laws 1976, c. 283, §§ 1 to 5, eff. June 1, 1976.

15.163 Reports to the legislature

Subdivision 1. On or before August 1, 1976, the responsible authority shall prepare a public document containing his name, title and address, and a description of each category of record, file, or process relating to private or confidential data on individuals maintained by his state agency, statewide system, or political subdivision. Forms used to collect private and confidential data shall be included in the public document. Beginning August 1, 1977 and annually thereafter, the responsible authority shall update the public document and make any changes necessary to keep it accurate.

Subd. 2. The commissioner may require responsible authorities to submit copies of the public document required in subdivision 1, and may request additional information relevant to data collection practices, policies and procedures.

Laws 1974, c. 479, § 2. Amended by Laws 1975, c. 401, § 2, eff. June 6, 1975; Laws 1976, c. 239, § 3; Laws 1976, c. 283, §§ 6, 7, eff. June 1, 1976.

15.1641 Duties of responsible authority

(a) Data on individuals is under the jurisdiction of the responsible authority who may appoint an individual to be in charge of each file or system containing data on individuals.

(b) Collection and storage of public, private or confidential data on individuals and use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature, local governing body or mandated by the federal government.

(c) Private or confidential data on individuals shall not be used, collected, stored or disseminated for any purposes other than those stated to an individual at the time of collection in accordance with section 15.165 or, in the case of data collected prior to August 1, 1975, for any purpose other than those originally authorized by law, unless (1) the responsible authority files a statement with the commissioner describing the purpose and necessity of the purpose with regard to the health, safety or welfare of the public and the purpose is approved by the commissioner, or (2) the purpose is subsequently authorized by the state or federal legislature, or (3) the purpose is one to which the individual subject or subjects of the data have given their informed consent.

(d) The use of summary data derived from private or confidential data on individuals under jurisdiction of one or more responsible authorities shall be permitted, provided that summary data is public pursuant to section 15.17. The responsible authority shall prepare summary data from private or confidential data on individuals upon the request of any person, provided that the request is in writing and the cost of preparing the data is borne by the requesting person. The responsible authority may delegate the power to prepare summary data to the administrative officer responsible for any central repository of summary data, or to a person outside of its agency if the person agrees in writing not to disclose private or confidential data on individuals.

(e) The responsible authority shall establish procedures and safeguards to ensure that all public, private or confidential data on individuals is accurate, complete and current. Emphasis shall be placed on the data security requirements of computerized files containing private or confidential data on individuals which are accessible directly via telecommunications technology, including security during transmission.

Added by Laws 1975, c. 401, § 3, eff. June 6, 1975.

15.1642 Emergency classification

Subdivision 1. Application. The responsible authority of a state agency, political subdivision or statewide system may apply to the commissioner for permission to classify data or types of data under section 15.162, subdivision 2a or 5a, for its own use and for the use of other similar agencies, subdivisions or systems on an emergency basis until a proposed statute can be acted upon by the legislature. The application for emergency classification is public data.

Subd. 2. Contents of application. An application for emergency classification shall include and the applicant shall have the burden of clearly establishing at least the following information:

(a) That no statute currently exists which either allows or forbids classification under section 15.162, subdivision 2a or 5a;

(b) That the data on individuals has been treated as either private or confidential by custom of long standing which has been recognized by other similar state agencies or other similar political subdivisions, if any, and by the public;

(c) That a compelling need exists for immediate emergency classification, which if not granted could adversely affect the public interest or the health, safety, well being or reputation of the data subject.

If the commissioner grants the emergency classification, it shall be submitted with the complete record relating to the application to the attorney general, who shall review the classification as to form and legality. The attorney general shall, within 20 days, either approve or disapprove the classification.

Subd. 3. Expiration of emergency classification. All emergency classifications granted under this section and still in effect shall expire on June 30, 1977. No emergency classifications shall be granted after June 30, 1977.

15.165 Rights of subjects of data

The rights of individuals on whom the data is stored or to be stored shall be as follows:

(a) An individual asked to supply private or confidential data concerning himself shall be informed of: (1) both the purpose and intended use of the requested data, (2) whether he may refuse or is legally required to supply the requested data, and (3) any known consequence arising from his supplying or refusing to supply private or confidential data.

(b) Upon request to a responsible authority, an individual shall be informed whether he is the subject of stored data on individuals, whether it be classified as public, private or confidential. Upon his further request, an individual who is the subject of stored public or private data on individuals shall be shown the data without any charge to him and, if he desires, informed of the content and meaning of that data. After an individual has been shown the data and informed of its meaning, the data need not be disclosed to him for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected. The responsible authority shall provide copies of the data upon request

by the individual subject of the data, provided that the cost of providing copies is borne by the requesting individual.

(c) An individual may contest the accuracy or completeness of public or private data concerning himself. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days correct the data if the data is found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, or notify the individual of disagreement. Data in dispute shall not be disclosed except under conditions of demonstrated need and then only if the individual's statement of disagreement is included with the disclosed data. The determination of the responsible authority is appealable in accordance with the provisions of the administrative procedure act [1] relating to contested cases.

Laws 1974, c. 479, § 4. Amended by Laws 1975, c. 401, § 4, eff. June 6, 1975.

15.166 Civil penalties

Subdivision 1. Notwithstanding section 466.03, a political subdivision, responsible authority or state agency which violates any provision of sections 15.162 to 15.1671 is liable to a person who suffers any damage as a result of the violation, and the person damaged may bring an action against the political subdivision, responsible authority or state agency to cover any damages sustained, plus costs and reasonable attorney fees. In the case of a willful violation, the political subdivision or state agency shall, in addition, be liable to exemplary damages of not less than $100, nor more than $1,000 for each violation. The state is deemed to have waived any immunity to a cause of action brought under sections 15.162 to 15.1671.

Subd. 2. A political subdivision, responsible authority or state agency which violates or proposes to violate sections 15.162 to 15.1671 may be enjoined by the district court. The court may make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate sections 15.162 to 15.1671.

Subd. 3. An action filed pursuant to this section may be commenced in the county in which the individual alleging damage or seeking relief resides, or in the county wherein the political subdivision exists, or, in the case of the state, any county.

Laws 1974, c. 479, § 5. Amended by Laws 1975, c. 401, § 5, eff. June 6, 1975; Laws 1976, c. 239, §§ 4, 5.

15.167 Penalties

Any person who willfully violates the provisions of sections 15.162 to 15.1671 or any lawful rules and regulations promulgated thereunder is guilty of a misdemeanor. Willful violation of sections 15.162 to 15.1671 by any public employee constitutes just cause for suspension without pay or dismissal of the public employee.

15.1671 Duties of the commissioner

The commissioner shall with the advice of the intergovernmental information services advisory council promulgate rules, in accordance with the rulemaking procedures in the administrative procedures act which shall apply to state agencies, statewide systems and political subdivisions to implement the enforcement and administration of sections 15.162 to 15.169. The rules shall not affect section 15.165, relating to rights of subjects of data, and section 15.169, relating to the powers and duties of the privacy study commission. Prior to the adoption of rules authorized by this section the commissioner shall give notice to all state agencies and political subdivisions in the same manner and in addition to other parties as required by section 15.0412, subdivision 3, of the date and place of hearing, enclosing a copy of the rules and regulations to be adopted.

Laws 1975, c. 271, § 6; Laws 1975, c. 401, § 7, eff. June 6, 1975.

15.169 Privacy study commission

Subdivision 1. Creation. There is hereby created a privacy study commission consisting of six members, three of whom shall be appointed by the committee on committees, and three of whom shall be appointed by the speaker of the house. The commission shall act from the time its members are appointed until the commencement of the 1977 regular session of the legislature. Any vacancy shall be filled by the appointing power.

Subd. 2. Organization and procedure. At its first meeting the commission shall elect a chairman, a vice-chairman and such other officers from its membership as it may deem necessary. The commission shall adopt rules governing its operation and the conduct of its meetings and hearings, which rules are not subject to the provisions of the administrative procedures act.

Subd. 3. Duties and powers. The commission shall make a continuing study and investigation of data on individuals collected, stored, used and disseminated by political subdivisions, state agencies, statewide systems and any other public or private entity in the state of Minnesota the commission may deem appropriate for such study and investigation. The powers and duties of the commission shall include, but are not limited to the following:

(1) the holding of meetings at times and places it designates to accomplish the purposes set forth in Laws 1975, Chapter 401. The commission may hold hearings at times and places convenient for the purpose of taking evidence and testimony to effectuate the purposes of Laws 1975, Chapter 401, and for those purposes the commission may, through its chairman by a three-fourths vote of its members, issue subpoenas, including subpoenas duces tecum, requiring the appearance of persons, production of relevant records and the giving of relevant testimony. In the case of contumacy or refusal to obey a subpoena issued under authority herein provided, the district court in the county where the refusal or contumacy occurred may, upon complaint of the commission, punish as for contempt the person guilty thereof.

(2) the study of all data on individuals collected, stored, used or disseminated in the state of Minnesota including, but not limited to that collected, stored, used or disseminated by any political subdivision, state agency or statewide system in order to determine the standards and procedures in force for the protection of private and confidential data on individuals. In conducting such study, the commission shall:

(a) determine what executive orders, attorney general opinions, regulations, laws or judicial decisions govern the activities under study and the extent to which they are consistent with the rights of public access to data on individuals, privacy, due process of law and other guarantees in the constitution.

(b) determine to what extent the collection, storage, use or dissemination of data on individuals is affected by the requirements of federal law.

(c) examine the standards and criteria governing programs, policies and practices relating to the collection, storage, use or dissemination of data on individuals in the state of Minnesota.

(d) collect and utilize to the maximum extent practicable, all findings, reports, studies, hearing transcripts, and recommendations of governmental legislature, and private bodies, institutions, organizations and individuals which pertain to the problems under study by the commission.

(3) the recommendation to the legislature of the extent, if any, to which the requirements and principles of Laws 1975, Chapter 401 should be applied to information practices in existence in the state of Minnesota by legislation, administrative action or voluntary adoption of such requirements and principles, and report on such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals

while meeting the legitimate needs of government and society for information.

Subd. 4. Office. The commission shall maintain an office in the capitol group of buildings in space provided by the commissioner of administration.

Subd. 5. Supplies; staff. The commission may purchase equipment and supplies and employ such professional, clerical, and technical assistants from the senate and house staff as it deems necessary in order to perform the duties herein prescribed. The commission may invite consultants and other knowledgeable persons to appear before it and offer testimony and compensate them appropriately.

Subd. 6. Assistance of other agencies. The commission may request any information including any data on individuals from any political subdivision, statewide system, or state agency or any employee thereof in order to assist in carrying out the purposes of the act, and notwithstanding any law to the contrary, such employee or agency is authorized and directed to promptly furnish any such data or information requested.

Subd. 7. Expenses, reimbursement. Members of the commission shall be compensated as provided in section 3.102.

Subd. 8. Penalties for disclosure. (1) Any member, assistant or staff of the commission who, by virtue of his employment or official position, has possession of, or access to, agency records which contain private or confidential data on individuals the disclosure of which is prohibited by law, and also knowing or having reason to know that disclosure of such data is prohibited, willfully discloses such data in any manner to any person or agency not entitled to receive it shall be guilty of a misdemeanor.

(2) Any member, assistant or staff of the commission who knowingly and willfully requests or obtains any private or confidential data on individuals under false pretenses the disclosure of which such person is not entitled by law shall be guilty of a misdemeanor.

Subd. 9. Report to the legislature. The commission shall report its findings and recommendations to the legislature as soon as they are available, in any case not later than November 15, 1976, and may supplement them thereafter until January 15, 1977. One copy of the report shall be filed with the secretary of the senate, one copy with the chief clerk of the house of representatives and ten copies with the legislative reference library.

Subd. 10. **Appropriation.** There is appropriated from the general fund the sum of $25,000 for the biennium ending June 30, 1977, or as much thereof as necessary, to pay the expenses incurred by the commission. Expenses of the commission shall be approved by the chairman or another member as the rules of the commission provide and paid in the same manner that other state expenses are paid.

Added by Laws 1975, c. 401, § 8, eff. June 6, 1975.

15.17 Official records

Subdivision 1. Must be kept. All officers and agencies of the state, and all officers and agencies of the counties, cities and towns, shall make and keep all records necessary to a full and accurate knowledge of their official activities. All such public records shall be made on paper of durable quality and with the use of ink, carbon papers, and typewriter ribbons of such quality as to insure permanent records. Every public officer, and every county officer with the approval of the county board, is empowered to record or copy records by any photographic, photostatic, microphotographic, or microfilming device, approved by the Minnesota historical society, which clearly and accurately records or copies them, and such public officer or such county officer may make and order that such photographs, photostats, microphotographs, microfilms, or other reproductions, be substituted for the originals thereof, and may direct the destruction or sale for salvage or other disposition of the originals from which the same were made. Any such photographs, photostats, microphotographs, microfilms, or other reproductions so made shall for all purposes be deemed the original recording of such papers, books, documents and records so reproduced when so ordered by any officer with the approval of the county board, and shall be admissible as evidence in all courts and proceedings of every kind. A facsimile or exemplified or certified copy of any such photograph, photostat, microphotograph, microfilm, or other reproduction, or any enlargement or reduction thereof, shall have the same effect and weight as evidence as would a certified or exemplified copy of the original.

Subd. 2. Responsibility for records. The chief administrative officer of each public agency shall be responsible for the

preservation and care of the agency's public records, which shall include written or printed books, papers, letters, contracts, documents, maps, plans, and other records made or received pursuant to law or in connection with the transaction of public business. It shall be the duty of each such agency, and of the chief administrative officer thereof, to carefully protect and preserve public records from deterioration, mutilation, loss, or destruction. Records or record books may be repaired, renovated, or rebound when necessary to preserve them properly.

Subd. 3. Delivery to successor. Every legal custodian of public records, at the expiration of his term of office or authority, or on his death his legal representative, shall deliver to his successor in office all public records in his custody; and the successor shall receipt therefor to his predecessor or his legal representative and shall file in his office a signed acknowledgment of the delivery. Every public officer shall demand from his predecessor in office, or his legal representative, the delivery of all public records belonging to his office.

Subd. 4. Accessible to public. Every custodian of public records shall keep them in such arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records. Except as otherwise expressly provided by law, he shall permit all public records in his custody to be inspected, examined, abstracted, or copied at reasonable times and under his supervision and regulation by any person; and he shall, upon the demand of any person, furnish certified copies thereof on payment in advance of fees not to exceed the fees prescribed by law. Full convenience and comprehensive accessibility shall be allowed to researchers including historians, genealogists and other scholars to carry out extensive research and complete copying of all public records except as otherwise expressly provided by law.

Amended by Laws 1957, c. 28, §§ 1, 2; Laws 1973, c. 123, art. 5, § 7; Laws 1973, c. 422, § 1.

15.171 Official records; compilation, maintenance and storage of information

Notwithstanding any other law, any public officer who has jurisdiction over a collection of official records may select and use, subject to the approval of the commissioner of administration, alternative methods for the compilation, maintenance and storage of the information contained in those records, subject to the following conditions:

(1) The methods selected must provide for access to the information contained in the records by those authorized by law to have access to that information; and

(2) The method selected must provide for the preservation of the information contained in the records to the extent specified by law.

Laws 1974, c. 323, § 1.

15.172 Approval of alternate method

At least 90 days prior to the date upon which he proposes to put into effect an alternate method of compilation, maintenance, and storage of records, the public official shall submit a description of the proposed method and the reasons for adopting it to the commissioner of administration. If the commissioner of administration finds that the proposed method complies with the conditions specified in section 15.171, he shall approve its use; if not, he shall disapprove its use. A failure of the commissioner of administration to act before the date upon which the public official proposes to put the alternative method into effect shall be deemed a disapproval of that method.

Laws 1974, c. 323, § 2.

15.173 Notice of alternative method

Whenever the commissioner of administration approves an alternate method of compilation, maintenance and storage, he shall maintain a written notice of that approval, the date of taking effect of the alternate method, a description of the method and the reasons for its adoption in his office as a public record. In the case of a record having less than statewide significance, the public official having jurisdiction over the records shall file a written notice containing the same information as the notice maintained by the commissioner of administration with the county auditor, clerk or other similar recording officer of the affected governmental subdivision and such notices shall also be maintained as public records.

15.174 Records now in use

Notwithstanding section 15.171, any public official using an alternate method of compilation, maintenance and storage of a record on August 1, 1974, may continue to use that alternate method unless and until that method is expressly disapproved by the commissioner of administration. Such an official shall file a description of the method and the reasons for its use on or before August 1, 1974. Failure of the commissioner of administration to approve or disapprove such a method within 90 days shall be deemed an approval. Notice of such methods shall be filed as required in section 15.173.

Laws 1974, c. 323, § 4.

CHAPTER 364. CRIMINAL OFFENDERS, REHABILITATION [NEW]

364.01 Policy

The legislature declares that it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship. The opportunity to secure employment or to pursue, practice, or engage in a meaningful and profitable trade, occupation, vocation, profession or business is essential to rehabilitation and the resumption of the responsibilities of citizenship.

Laws 1974, c. 298, § 1.

Title of Act:
An Act relating to licensing and public employment; ex-criminal offenders; providing that persons shall not be disqualified from certain occupations solely because of prior criminal convictions. Laws 1974, c. 298.

Library references
Convicts ⇐1.
C.J.S. Convicts § 1 et seq.

364.02 Definitions

Subdivision 1. For the purposes of sections 364.01 to 364.10, the terms defined in this section have the meanings given them.

Subd. 2. "Occupation" includes all occupations, trades, vocations, professions, businesses, or employment of any kind for which a license is required to be issued by the state of Minnesota, its agencies, or political subdivisions.

Subd. 3. "License" includes all licenses, permits, certificates, registrations, or other means required to engage in an occupation which are granted or issued by the state of Minnesota, its agents or political subdivisions before a person can pursue, practice, or engage in any occupation.

Subd. 4. "Public employment" includes all employment with the state of Minnesota, its agencies, or political subdivisions.

Subd. 5 "Conviction of crime or crimes" shall be limited to convictions of felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed. No other criminal conviction shall be considered.

Subd. 6. "Hiring or licensing authority" shall mean the person, board, commission, or department of the state of Minnesota, its agencies or political subdivisions, responsible by law for the hiring of persons for public employment or the licensing of persons for occupations.

Laws 1974, c. 298, § 2.

364.03 Relation of conviction to employment or occupation

Subdivision 1. Notwithstanding any other provision of law to the contrary, no person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely or in part because of a prior conviction of a crime or crimes, unless the crime or crimes for which convicted directly relate to the position of employment sought or the occupation for which the license is sought.

Subd. 2. In determining if a conviction directly relates to the position of public employment sought or the occupation for which the license is sought, the hiring or licensing authority shall consider:

(a) The nature and seriousness of the crime or crimes for which the individual was convicted;

(b) The relationship of the crime or crimes to the purposes of regulating the position of public employment sought or the occupation for which the license is sought;

(c) The relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.

Subd. 3. A person who has been convicted of a crime or crimes which directly relate to the public employment sought or to the occupation for which a license is sought shall not be disqualified from the employment or occupation if the person can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the public employment sought or the occupation for which the license is sought. Sufficient evidence of rehabilitation may be established by the production of:

(a) A copy of the local, state, or federal release order; and

(b) Evidence showing that at least one year has elapsed since release from any local, state, or federal correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; or

(c) A copy of the relevant department of corrections discharge order or other documents showing completion of probation or parole supervision.

In addition to the documentary evidence presented, the licensing or hiring authority shall consider any evidence presented by the applicant regarding:

(1) The nature and seriousness of the crime or crimes for which convicted;

(2) All circumstances relative to the crime or crimes, including mitigating circumstances or social conditions surrounding the commission of the crime or crimes;

(3) The age of the person at the time the crime or crimes were committed;

(4) The length of time elapsed since the crime or crimes were committed; and

(5) All other competent evidence of rehabilitation and present fitness presented, including, but not limited to, letters of reference by persons who have been in contact with the applicant since his or her release from any local, state, or federal correctional institution.

Laws 1974, c. 298, § 3.

Library references
Convicts ⇐1.
Licenses ⇐20.
Officers ⇐31.
C.J.S. Convicts § 1 et seq.
C.J.S. Licenses §§ 32, 33.
C.J.S. Officers § 24.

1. Construction and application

Inasmuch as this section superseding city ordinance governing motion picture theaters was enacted during pendency of appeal from order denying temporary injunction against enforcement of ordinance and city did not intend to base any license denial upon ordinance or to arrest motion picture theater operators for operating theater without license issued pursuant to the ordinance, appeal was rendered moot. Conaway v. City of Minneapolis, 1974, 301 Minn. 494, 222 N.W.2d 70.

364.04 Availability of records

The following criminal records shall not be used, distributed, or disseminated by the state of Minnesota, its agents or political subdivisions in connection with any application for public employment nor in connection with an application for a license:

(1) Records of arrest not followed by a valid conviction.

(2) Convictions which have been, pursuant to law, annulled or expunged.

(3) Misdemeanor convictions for which no jail sentence can be imposed.

Laws 1974, c. 298, § 4.

Library references
Records ⇐14.
C.J.S. Records § 35 et seq.

364.05 Notification upon denial of employment or disqualification from occupation

If a hiring or licensing authority denies an individual a position of public employment or disqualifies the individual from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part

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because of the individual's prior conviction of a crime, the hiring or licensing authority shall notify the individual in writing of the following:

(1) The grounds and reasons for the denial or disqualification;

(2) The applicable complaint and grievance procedure as set forth in section 364.06;

(3) The earliest date the person may re-apply for a position of public employment or a license; and

(4) That all competent evidence of rehabilitation presented will be considered upon re-application.

Laws 1974, c. 298, § 5.

364.06 Violations, procedure

Any complaints or grievances concerning violations of sections 364.01 to 364.10 shall be processed and adjudicated in accordance with the procedures set forth in chapter 15, the administrative procedure act.

Laws 1974, c. 298, § 6.

364.07 Application

The provisions of sections 364.01 to 364.10 shall prevail over any other laws, rules, and regulations which purport to govern the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment on the grounds of conviction of a crime or crimes. In deciding to grant, deny, revoke, suspend, or renew a license, or to deny, suspend, or terminate public employment for a lack of good moral character or the like, the hiring or licensing authority may consider evidence of conviction of a crime or crimes but only in the same manner and to the same effect as provided for in sections 364.01 to 364.10. Nothing in sections 364.01 to 364.10 shall be construed to otherwise affect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license or the initiation, suspension, or termination of public employment.

Laws 1974, c. 298, § 7.

364.08 Practice of law; exception

Sections 364.01 to 364.10 shall not apply to the practice of law; but nothing in this section shall be construed to preclude the supreme court, in its discretion, from adopting the policies set forth in sections 364.01 to 364.10.

Laws 1974, c. 298, § 8.

Library references
Attorney and Client ⇐39, 61.
C.J.S. Attorney and Client §§ 21, 72.

364.09 Law enforcement; exception

Sections 364.01 to 364.10 shall not apply to the practice of law enforcement; but nothing in this section shall be construed to preclude the Minnesota police and peace officers training board from recommending policies set forth in sections 364.01 to 364.10 to the attorney general for adoption in his discretion.

Laws 1974, c. 298, § 9.

364.10 Violation of civil rights

Violation of the rights established in sections 364.01 to 364.10 shall constitute a violation of a person's civil rights.

Laws 1974, c. 298, § 10.

Attachment K

EXCERPTS FROM MINNESOTA'S ADMINISTRATIVE PROCEDURES ACT

15.0418 CONTESTED CASE; HEARING, NOTICE. In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place and issues involved, but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. The agency shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe shorthand notes unless requested for purposes of rehearing or court review. If a transcript is requested, the agency may, unless otherwise provided by law, require the party requesting to pay the reasonable costs of preparing the transcript. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default. Each agency may adopt appropriate rules of procedure for notice and hearing in contested cases.

[1957 c 806 s 8]

15.0419 EVIDENCE IN CONTESTED CASES. Subdivision 1. In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial and repetitious evidence.

Subd. 2. All evidence, including records and documents (except tax returns and tax reports) in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence (except tax returns and tax reports) shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

Subd. 3. Every party or agency shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

Subd. 4. Agencies may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified in writing either before or during hearing, or by reference in preliminary reports or otherwise, or by oral statement in the record, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

[1957 c 806 s 9]

15.042 [Repealed, 1957 c 806 s 13]

15.0421 PROPOSAL FOR DECISION IN CONTESTED CASE. Whenever in a contested case a majority of the officials of the agency who are to render the final decision have not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision, including the statement of reasons therefor, has been served on the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision.

[1957 c 806 s 10]

15.0422 DECISIONS, ORDERS. Every decision and order adverse to a party of the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by a statement of the reasons therefor. The statement of reasons shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying statement of reasons together with a certificate of service shall be delivered or mailed upon request to each party or to his attorney of record.

[1957 c 806 s 11]

15.0423 REVIEW OF LICENSING OR REGISTRATION PROCEEDINGS, STAY. Subdivision 1. Where an appeal is taken or certiorari proceeding is instituted to determine the right of a board or other administrative agency to revoke or refuse to issue or reissue a license or registration which expires upon a specified date, the term of such license or registration shall not expire until 30 days after final determination of such appeal or certiorari proceeding.

Subd. 2. This section does not alter, change or affect the determination made by the board or other administrative agency, or by the reviewing court, as to the suspension, revocation or denial of the license or registration during the pendency of the appeal or certiorari proceeding.

[1963 c 565 s 1, 2]

15.0424 JUDICIAL REVIEW OF AGENCY DECISIONS. Subdivision 1. Application. Any person aggrieved by a final decision in a contested case of any agency as defined in Minnesota Statutes, Section 15.0111, Subdivision 2 (including those agencies excluded from the definition of "agency" in section 15.0111, subdivision 2, but excepting the tax court, the workmen's compensation commission sitting on workmen's compensation cases, the department of employment services, the director of mediation services, and the department of public service), whether such decision is affirmative or negative in form, is entitled to judicial review thereof, but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo provided by law now or hereafter enacted. The term "final decision" as herein used shall not embrace a proposed or tentative decision until it has become the decision of the agency either by express approval or by the failure of an aggrieved person to file exceptions thereto within a prescribed time under the agency's rules.

Subd. 2. Petition, service. (a) Proceedings for review shall be instituted by serving a petition thereof personally or by registered mail upon the agency or one of its members or upon its secretary or clerk and by filing such petition in the office of the clerk of district court for the county wherein the agency has its principal office or the county of residence of the petitioners, all within 30 days after the agency shall have served such decision and any order made pursuant thereto by mail on the parties of record therein; subject, however, to the following:

(1) In the case of a tentative or proposed decision which has become the decision of the agency either by express approval or by a failure by an aggrieved person to file exceptions within a prescribed time under the agency's rules, such 30-day period shall not begin to run until the latest of the following events shall have occurred: (a) such decision shall have become the decision of the agency as aforesaid; (b) such decision, either before or after it has become the decision of the agency, shall have been served by mail by such agency on the parties of record in such proceeding.

(2) In case a request for rehearing or reconsideration shall have been made within the time permitted and in conformity with the agency's rules, such 30-day period shall not begin to run until service of the order finally disposing of the application for rehearing or reconsideration, but nothing herein shall be construed as requiring that an application for rehearing or reconsideration be filed with and disposed of by the agency as a prerequisite to the institution of a review proceeding under this section.

(b) The petition shall state the nature of the petitioner's interest, the facts showing the petitioner is aggrieved and is affected by the decision, and the ground or grounds upon which the petitioner contends that the decision should be reversed or modified. The petition may be amended by leave of court although the time for serving the same has expired. The petition shall be entitled in the name of the person serving the same as petitioner and the name of the agency whose decision is sought to be reviewed as respondent. Copies of the petition shall be served, personally or by registered mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made; and for the purpose of such service the agency upon request shall certify to the petitioner the names and addresses of all such parties as disclosed by its records, which certification shall be conclusive. The agency and all parties to the proceeding before it shall have the right to participate in the proceedings for review. The court in its discretion may permit other interested parties to intervene.

(c) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance stating his position with reference to the affirmance, vacation, reversal or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general and shall be filed, together with proof of service thereof, with the clerk of the reviewing court within ten days after such service. Service of all subsequent papers or notices in such proceedings need be made only upon the petitioner, the named respondent, the attorney general, and such other persons as have served and filed the notice as herein provided, or have been permitted to intervene in said proceedings as parties thereto by order of the reviewing court.

Subd. 3. Stay of decision; stay of other appeals. The filing of the petition shall not stay the enforcement of the agency decision; but the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper. When an appeal from a final decision is commenced under this section in any district court of this state, any other later appeal under this section from such final decision involving the same subject matter shall be stayed until final decision of the first appeal.

Subd. 4. Transmittal of record. Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

Subd. 5. New evidence, hearing by agency. If, before the date set for hearing, application is made to the court for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

Subd. 6. Procedure on review. The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs. Except as otherwise provided all proceedings shall be conducted according to the rules of civil procedure.

[1963 c 809 s 1; 1965 c 698 s 3; Ex1967 c 1 s 6; 1969 c 567 s 3; 1969 c 1129 art 2 s 1; 1971 c 25 s 67; 1973 c 254 s 3]

15.0425 SCOPE OF JUDICIAL REVIEW. In any proceedings for judicial review by any court of decisions of any agency as defined in Minnesota Statutes, Section 15.0411, Subdivision 2 (including those agencies excluded from the definition of agency in section 15.0411, subdivision 2) the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

(a) In violation of constitutional provisions; or

(b) In excess of the statutory authority or jurisdiction of the agency; or

(c) Made upon unlawful procedure; or

(d) Affected by other error of law; or

(e) Unsupported by substantial evidence in view of the entire record as submitted; or

(f) Arbitrary or capricious.

[1963 c 809 s 2]

15.0426 APPEALS TO SUPREME COURT. An aggrieved party may secure a review of any final order or judgment of the district court under section 15.0424 or section 15.0425 by appeal to the supreme court. Such appeal shall be taken in the manner provided by law for appeals from orders or judgments of the district court in other civil cases.

[1963 c 809 s 3]

is public business and shall be conducted at open meetings except as otherwise provided herein.

SOURCES: Laws, 1975, ch. 481, § 1, eff from and after January 1, 1976.

§ 25-41-3. Definitions.

For purposes of this chapter, the following words shall have the meaning of ascribed herein, to wit:

(a) "Public body" shall mean: (i) any executive or administrative board, commission, authority, council, department, agency, bureau, or any other policy-making entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether such entity be created by statute or executive order, which is supported wholly or in part by public funds or expends public funds, and (ii) any standing, interim or special committee of the Mississippi Legislature. There shall be exempted from the provisions of this chapter the judiciary, including all jury deliberations, public and private hospital staffs, public and private hospital boards and committees thereof, law enforcement officials, the military, the state probation and parole board, the workmen's compensation commission, legislative subcommittees and legislative conference committees.

(b) "Meeting" shall mean an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control jurisdiction, or advisory power.

SOURCES: Laws, 1975, ch. 481, § 2, eff from and after January 1, 1976.

§ 25-41-5. Official meetings of public bodies to be public and open.

All official meetings of any public body, unless otherwise provided in this chapter or in the Constitutions of the United States of America or the State of Mississippi, are declared to be public meetings and shall be open to the public at all times unless declared an executive session as provided in section 25-41-7.

SOURCES: Laws, 1975, ch. 481, § 3, eff from and after January 1, 1976.

Research and Practice References—

2 Am Jur 2d, Administrative Law § 229.

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 161.

ALR Annotations—

Validity, construction, and application of statutes making public proceedings open to the public. 38 ALR3d 1066.

§ 25-41-7. Executive sessions.

(1) Any public body may enter into executive session for the transaction of public business; provided, however, all meetings of any such public body shall commence as an open meeting, and an affirmative vote of three-fifths (3/5) of all members present shall be required to declare an executive session.

(2) The procedure to be followed by any public body in declaring an executive session shall be as follows: Any member shall have the right to request by motion a closed determination upon the issue of whether or not to declare an executive session. Such motion, by majority vote, shall require the meeting to be closed for a preliminary determination of the necessity for executive session. No other business shall be transacted until the discussion of the nature of the matter requiring executive session has been completed and a vote, as required in subparagraph (1) hereof, taken on the issue.

(3) The total vote on the question of entering into an executive session shall be recorded and spread upon the minutes of such public body.

(4) Any such vote whereby executive session is declared shall be applicable only to that particular meeting on that particular day.

SOURCES: Laws, 1975, ch. 481, § 4, eff from and after January 1, 1976.

Research and Practice References—

2 Am Jur 2d, Administrative Law § 229.

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 161.

ALR Annotations—

Validity, construction, and application of statutes making public proceedings open to the public. 38 ALR3d 1066.

§ 25-41-9. Conduct of persons attending meetings.

Any public body may make and enforce reasonable rules and regulations for the conduct of persons attending its meetings.

SOURCES: Laws, 1975, ch. 481, § 5, eff from and after January 1, 1976.

Research and Practice References—

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 162.

§ 25-41-11. Minutes.

Minutes shall be kept of all meetings of a public body, whether in open or executive session, showing the members present and accurately recording any final actions taken at such meetings. The minutes shall be recorded and shall be open to public inspection

during regular business hours within a reasonable time after recess or adjournment.

Minutes of legislative committee meetings shall consist of a written record of attendance and final actions taken at such meetings.

SOURCES: Laws, 1975, ch. 481, § 6, eff from and after January 1, 1976.

Research and Practice References—
2 Am Jur 2d, Administrative Law § 230.
56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 177.

§ 25-41-13. Notice of meetings.

(1) Any public body which holds its meetings at such times and places and by such procedures as are specifically prescribed by statute shall continue to do so and no additional notice of such meetings shall be required except that provisions for any recess or interim meeting shall be entered upon the minutes of such public body.

(2) Any public body, other than a legislative committee, which does not have statutory provisions prescribing the times and places and the procedures by which its meetings are to be held shall, at its first regular or special meeting after the effective date of this chapter spread upon its minutes the times and places and the procedures by which all of its meetings are to be held.

(3) During a regular or special session of the Mississippi Legislature, notice of meetings of all committees, other than conference committees, shall be given by announcement on the loudspeaker during sessions of the house of representatives or senate or by posting on a bulletin board provided for that purpose by each body.

(4) When not in session, the meeting times and places of all committees shall be kept by the clerk of the house of representatives as to house committees and by the secretary of the senate as to senate committees, and shall be available at all times during regular working hours to the public and news media.

SOURCES: Laws, 1975, ch. 481, § 7, eff from and after January 1, 1976.

Cross references—
As to duties of secretary of senate and clerk of house of representatives generally, see § 5-1-31.

Research and Practice References—
2 Am Jur 2d, Administrative Law § 228.
56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §§ 158, 159.

CHAPTER 53

Central Data Processing Authority

New Sections Added

SEC.

§ 25-53-3. Definitions.

For the purposes of this chapter the term "authority" shall be construed to mean "state central data processing authority."

As used in this chapter the term computer equipment or services shall mean any data processing, computer or computer related telecommunications equipment, or services utilized in connection therewith, including, but not limited to, all phases of computer soft ware and consulting services, and insurance on all state-owned computer equipment.

Acquisition of computer equipment or services shall mean the purchase, lease, rental, or acquisition in any other manner of any such computer equipment or services.

SOURCES: Laws, 1972, ch. 481, § 1, eff from and after passage (approved May 9, 1972).

§ 25-53-5. Powers and duties.

The authority shall have the following powers, duties, and responsibilities:

(a) The authority shall provide for the development of plans for the efficient acquisition and utilization of computer equipment and services by all agencies of state government, and provide for their implementation. In so doing, the authority may contract for the services of qualified consulting firms in the field of data processing and utilize the service of such consultants as may be necessary for such purposes.

(b) The authority shall immediately institute procedures for carrying out the purposes of this chapter and supervise the efficient execution of the powers and duties of the office of

Mississippi Department of Public Safety shall be responsible for conducting background investigations of the prospective employee and expeditiously report the results of such investigation to the executive director. An employee may be provisionally employed based on a reference check by the employing agency pending final receipt of the results of the detailed background investigation conducted by the Mississippi Department of Public Safety for a period not to exceed sixty (60) days.

(c) Successfully complete a suitable instructional course on the subjects of information security, privacy and confidentiality and protection, to be developed and taught under the supervision of the executive director. An employee may work in a provisional capacity under the direct supervision of an information confidentiality officer as part of an on-the-job training program while completing instructional requirements, for a period not to exceed ninety (90) days.

(d) Be duly sworn to the following oath: "I, _____, do solemnly swear to protect and uphold the confidentiality of all information that may come to my knowledge that is designated as 'confidential information' by another state agency or institution for which I may handle or process in the normal course of my duties. I swear to exercise reasonable care in the handling and processing of all such designated data and further that I will not reveal or otherwise divulge information from such data obtained. I understand that proven violation of this oath will subject me to forfeiture of my bond and dismissal from employment."

(e) Enter into bond in the amount of five thousand dollars ($5,000.00) with a surety company authorized to do business in the state, and conditioned to pay the full amount thereof as liquidated damages to any person about whom confidential information is disclosed in violation of his oath.

(f) Be identified by a wallet-sized identification card with a picture of the person to be carried at all times while on duty.

SOURCES: Laws, 1976, ch. 372, § 2, eff from and after July 1, 1976.

Cross references—

As to appointment of information confidentiality officers, see § 25–53–21.

§ 25–53–53. Handling and processing of information and data.

Information and data shall be considered public record information and data and receive normal handling and processing unless designated as "confidential information" by the agency and institution originating the data. Information and data designated as

"confidential information" will receive special handling based on procedures agreed to by the executive director and the agency or institution head and shall be handled in accordance with the oath subscribed to by the confidentiality officer.

SOURCES: Laws, 1976, ch. 372, § 3, eff from and after July 1, 1976.

§ 25-53-55. Investigation of and hearing on complaints of allegedly improper disclosure of confidential information.

Upon written complaint of any person claiming to be adversely affected by disclosure of confidential information by any information confidentiality officer, the director shall give notice to the information confidentiality officer of the fact that such complaint has been filed and shall give such notice to the Chairman of the central data processing authority, who shall call a meeting of the members of the authority for the purpose of hearing such complaint. The authority shall then conduct an investigation into the matter and shall afford to the complaining party and the information confidentiality officer a hearing, of which reasonable notice shall be given. For purposes of such hearing, the authority, under signature of the secretary of the authority attested by the chairman, shall have the power to subpoena witnesses and documentary or other evidence. After such hearing, if the authority, based upon substantial evidence, shall find that the information confidentiality officer has disclosed confidential information in violation of his oath, the authority shall enter such finding of fact on its minutes and the information confidentiality officer shall be immediately discharged from employment. If the authority shall find that such oath has not been violated, it shall, likewise, enter such finding on its minutes and the complaint shall be dismissed. The finding of the authority shall be prima facie evidence of the truth thereof in any judicial procedure seeking forfeiture of the bond of such information confidentiality officer.

SOURCES: Laws, 1976, ch. 372, § 4, eff from and after July 1, 1976.

Cross references—

As to general powers and duties of central data processing authority, see § 25-53-5.

§ 25-53-57. Officer as legal agent and employee of agency or institution for which he is processing data.

An information confidentiality officer shall be considered a legal agent of the agency or institution and for the purposes of sections 25-53-51 to 25-53-59 shall be considered to be an employee of the agency or institution for which he may be processing data at that particular time.

SOURCES: Laws, 1976, ch. 372, § 5, eff from and after July 1, 1976.

§ 25–53–59. Penalty for improper release or divulgence of confidential information.

Any information confidentiality officer who shall intentionally and wilfully violate his oath by releasing or divulging confidential information without proper authority shall be guilty of a misdemeanor and sentenced to not exceeding one (1) year in jail or a fine of not exceeding one thousand dollars ($1,000.00), or both.

SOURCES: Laws, 1976, ch. 372, § 6, eff from and after July 1, 1976.

CHAPTER 55

Lost Records

§ 25–55–25. Duplicate for lost or destroyed original.

Research and Practice References—

Affidavit of loss, 12 Am Jur Legal Forms 2d, Lost and Destroyed Instruments §§ 169:14–169:16.

EXECUTIVE ORDER NO. 201

WHEREAS, the Criminal Justice Planning Division, Office of the Governor, was restructured by Executive Order No. 200, dated July 9, 1975, as the state planning agency to conduct programs provided by the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Juvenile Justice and Delinquency Prevention Act of 1974;

WHEREAS, the Criminal Justice Planning Division was established to serve the State as the centralized research and planning agency for the prevention and reduction of crime and delinquency and for the administration of justice;

WHEREAS, the Criminal Justice Planning Division and the United States Department of Justice, Law Enforcement Assistance Administration, has approved the development and implementation of the Mississippi Information and Statistics System (MISS) to provide criminal and juvenile justice agencies of Mississippi with automated information-sharing telecommunications systems;

WHEREAS, the Mississippi Information and Statistics System requires the formation of a supervisory body and two operational centers as the initial elements in system development and implementation:

NOW, THEREFORE, I, William L. Waller, Governor of the State of Mississippi, pursuant to the authority vested in me by the Constitution and applicable statutes of the State of Mississippi, do hereby order as follows:

SECTION 1. The Mississippi Information and Statistics System Policy Board (MISS Policy Board) is hereby designated as the supervisory body over the activities of the Mississippi Information and Statistics System.

SECTION 2. The duties and responsibilities of the Mississippi Information and Statistics System Policy Board shall consist of, but not be limited to, making major policy decisions for the MISS; approving modifications to the developmental components of the MISS; establishing the MISS Policy Board subcommittees; insuring adherence to the approved MISS plan for development and implementation; drafting and submitting appropriate legislation; insuring confidentiality, security and accuracy of justice system information; performing public information functions necessary to insure public acceptance of the MISS; and, performing such other functions as defined by subsequent operational needs.

SECTION 3. The Mississippi Information and Statistics System Policy Board shall consist of the following membership:

A. Governor, State of Mississippi;
B. Chief Justice, Mississippi Supreme Court;
C. Attorney General, State of Mississippi;
D. Executive Director, Criminal Justice Planning Division, Office of the Governor;
E. Commissioner, Mississippi Department of Public Safety;
F. Superintendent, Mississippi State Penitentiary;
G. Director, Mississippi Department of Youth Services;
H. President, Mississippi Sheriffs' Association;
I. President, Mississippi Association of Chiefs of Police;
J. Member, Mississippi House of Representatives (gubernatorial appointee);
K. Member, Mississippi Senate (gubernatorial appointee); and,
L. Nongovermental representative of the general public (gubernatorial appointee).

SECTION 4. The Mississippi Information and Statistics System Policy Board is authorized to establish such rules, regulations and procedures as are necessary to the exercise of its functions and as are consistent with the stated purpose of this order.

SECTION 5. The Mississippi Statistical Analysis Center is hereby established within the Criminal Justice Planning Division, Office of the Governor, and shall be supervised by the Executive Director of the Criminal Justice Planning Division.

SECTION 6. The Mississippi Statistical Analysis Center (MSAC) is hereby designated as an operational center of the Mississippi Information and Statistics System to provide statistical analyses of justice data and justice-related data.

SECTION 7. The duties and responsibilities of the Mississippi Statistical Analysis Center shall consist of, but not be limited to, providing analyses and interpretation of justice data and justice-related data in a meaningful format as required by the Executive, Legislative and Judicial branches of State government; providing coordination of technical assistance to State and local units of government for all programs of the Mississippi Information and Statistics System; and, providing statistical analyses for current or proposed justice programs or justice-related programs.

SECTION 8. The Mississippi Justice Information Center is hereby established within the Mississippi Department of Public Safety and shall be supervised by the Commissioner of the Mississippi Department of Public Safety.

SECTION 9. The Mississippi Justice Information Center is hereby designated as an operational center for the Mississippi Information and Statistics System to collect and exchange justice information.

Information Center shall consist of, but not be limited to, development and implementation of systems for statewide uniform crime reporting; development and implementation of systems for the collection of management and administrative statistics; maintenance of the statewide justice telecommunications systems; and providing technical assistance related to Mississippi Justice Information Center functions.

SECTION 11. All activities of the Mississippi Information and Statistics System shall be subject to the Constitution and the Laws of the State of Mississippi; legislative restrictions on the expenditure of funds; federal laws, regulations and guidelines; State budget and appropriation requirements; and, State administrative regulations.

SECTION 12. It shall be the duty of every department, agency, office, board, commission, institution, and political subdivision to cooperate with and assist the Mississippi Information and Statistics Policy Board, the Criminal Justice Planning Division, and the Mississippi Department of Public Safety in the development and implementation of the Mississippi Information and Statistics System.

SECTION 13. Executive Order No. 197, dated May 12, 1975, is hereby rescinded and held for naught.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed.

DONE at the Capitol in the City of Jackson, this ninth day of July, A.D., 1975.

GOVERNOR

BY THE GOVERNOR:

SECRETARY OF STATE

57.103. Sheriff to fingerprint and photograph prisoners—report to highway patrol—contents of report (second class and certain first class counties)

The sheriff in each county of the first class not having a charter form of government and in each county of the second class shall take pictures of and fingerprint any person who is taken into or placed in the custody of the sheriff by virtue of a warrant charging a felony. The report shall contain the following information:

(1) The name of the person;

(2) A description of the person and any other data to identify the person;

(3) The nature of the criminal offense.

The sheriff shall send a copy of the report, including a duplicate picture and fingerprints, to the main office of the state highway patrol, in Jefferson City. The report shall be filed in the office of the highway patrol, and copies of any report shall be available to any sheriff or law enforcement official upon the request of the sheriff or law enforcement official, when necessary in the performance of his official duties.

Amended by Laws 1973, p. 140, § 1.

57.105. To fingerprint and photograph prisoners—report to highway patrol (class three and four counties)

The sheriff in each county of the third and fourth class, shall take pictures of and fingerprint any person accused of or convicted of a criminal offense when the person is taken into or placed in the custody of sheriff. The report shall contain the following information:

(1) The name of the person;

(2) A description of the person, and any other data to identify the person;

(3) The nature of the criminal offense; and

(4) Whether the person was accused or convicted.

The sheriff shall send a copy of the report, including a duplicate picture and fingerprints, to the main office of the state highway patrol, in Jefferson City. The report shall be filed in the office of the highway patrol, and copies of any report shall be available to any sheriff or law enforcement official upon the request of the sheriff or law enforcement official, when necessary in the performance of his official duties. (L.1959 H.B.No.296 § 1(1))

549.151. Probation and parole records and court orders, how kept—privileged information

The clerk of the court shall keep in a permanent file all applications for probation or parole by the court, and shall keep in such manner as may be prescribed by the court complete and full records of all probations or paroles granted, revoked or terminated and all discharges from probations or paroles. All court orders relating to any probation or parole granted under the provisions of this chapter shall be kept in a like manner, and, if the defendant subject to any such order is under the supervision of the board of probation and parole, a copy of the order shall be sent to the board. Information and data obtained by a probation or parole officer in serving the court, or board of parole, or probation and parole commission, as the case may be, is privileged information, shall not be receivable in any court, and shall not be disclosed directly or indirectly to anyone other than the members of a parole board and the judge entitled to receive reports, except the court may in its discretion permit the inspection of the report, or parts thereof, by the defendant, or prisoner or his attorney, or other person having a proper interest therein, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful.

195.290. Records, how expunged, exception

After a period of not less than six months from the time that an offender was placed on probation by a court, such person, who at the time of the offense was twenty-one years of age or younger, may apply to the court which sentenced him for an order to expunge from all official records, except from those records maintained under the comprehensive drug abuse prevention and control act, as enacted in 1970, and all recordations of his arrest, trial and conviction. If the court determines, after a hearing and after reference to the controlled dangerous substances registry, that such person during the period of such probation and during the period of time prior to his application to the court under this section has not been guilty of any offenses, or repeated violation of the conditions of such probation, he shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied prior to such arrest and conviction. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or trial or conviction in response to any inquiry made of him for any purpose.

195.310. Injunction authorized

The circuit court may exercise jurisdiction to restrain or enjoin violations of sections 195.010 to 195.320.

(Added by L.1971 p. —— H.B.No.69 § A)

109.180. Public records open to inspection—refusal to permit inspection, penalty

Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen. Any official who violates the provisions of this section shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by confinement in the county jail not exceeding ninety days, or by both the fine and the confinement. (L.1961 p. 548 § 1)

109.190. Right of person to photograph public records—regulations

In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public records, instruments or documents, any person has the right of access to the records, documents or instruments for the purpose of making photographs of them while in the possession, custody and control of the lawful custodian thereof or his authorized deputy. The work shall be done under the supervision of the lawful custodian of the records who may adopt and enforce reasonable rules governing the work. The work shall, where possible, be done in the room where the records, documents or instruments are by law kept, but if that is impossible or impracticable, the work shall be done in another room or place as nearly adjacent to the place of custody as possible to be determined by the custodian of the records. While the work authorized herein is in progress, the lawful custodian of the records may charge the person desiring to make the photographs a reasonable rate for his services or for the services of a deputy to supervise the work and for the use of the room or place where the work is done. (L.1961 p. 548 § 2)

ARREST RECORDS

610.100. Arrest records, closed, when—expunged, when

If any person is arrested and not charged with an offense against the law within thirty days of his arrest, all records of the arrest and of any detention or confinement incident thereto shall thereafter be closed records to all persons except the person arrested. If there is no conviction within one year after the records are closed, all records of the arrest and of any detention or confinement incident thereto shall be expunged in any city or county having a population of five hundred thousand or more.
Laws 1973, p. 502, § 6.

610.105. Effect of nolle pros or dismissal on records

If the person arrested is charged but the case is subsequently nolle prossed, dismissed or the accused is found not guilty in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records to all persons except the person arrested or charged.

610.110. Failure to recite closed record excused

No person as to whom such records have become closed records or as to whom such records have been expunged shall thereafter under any provision of law be held to be guilty of perjury or otherwise of giving a false statement by reason of his failure to recite or acknowledge such arrest or trial in response to any inquiry made of him for any purpose.
Laws 1973, p. 502, § 8.

610.115. Penalty

Any person who willfully violates any provision of section 610.100 or 610.105 is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided by law.
Laws 1973, p. 502, § 9.

MISSOURI

EXECUTIVE OFFICE
STATE OF MISSOURI
JEFFERSON CITY

CHRISTOPHER S. BOND
GOVERNOR

EXECUTIVE ORDER

WHEREAS, there is need to reduce crime and to improve the state's criminal justice system to guarantee a higher level of personal and public safety for Missouri citizens, and

WHEREAS, to accomplish these goals better information is needed with regard to criminal offenders, crime events and the operation of Missouri's criminal justice system, and

WHEREAS, the Omnibus State Reorganization Act of 1974 has given the Missouri Department of Public Safety the responsibility to provide overall coordination in the state's public safety and law enforcement program, to provide channels of coordination with local and federal agencies in regard to public safety, law enforcement and with all correctional and judicial agencies in regard to matters pertaining to its responsibilities as they may inter-relate with the other agencies or offices of state, local or federal government.

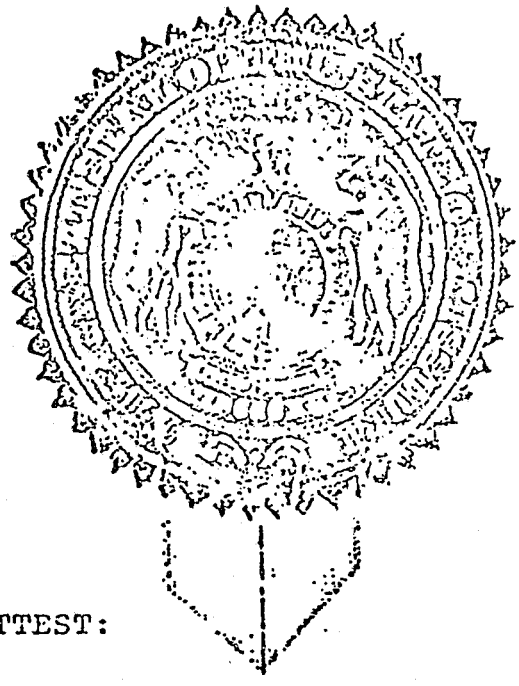
NOW, THEREFORE, I, CHRISTOPHER S. BOND, Governor of the State of Missouri, by virtue of the authority vested in me by the Constitution and the laws of the State of Missouri, do hereby order as follows:

1. That the Missouri Department of Public Safety organize and establish a crime information system to collect and maintain crime occurrence data, computerized criminal histories, statistics on the flow of offenders through Missouri's criminal justice system, and such other information as may be necessary to reduce crime and to improve the administration of justice.

2. That the Missouri Department of Public Safety establish adequate security and privacy controls to protect the rights of the individual and to

insure the integrity of the state's criminal information system in a manner consistent with state and federal laws and regulations.

IN WITNESS WHEREOF: I have hereunto set my hand and caused to be affixed the great seal of the State of Missouri in the City of Jefferson on this 6th day of May, 1975.



GOVERNOR

ATTEST:

SECRETARY OF STATE

NONCRIMINAL JUSTICE AGENCIES ELIGIBLE TO RECEIVE CRIMINAL OFFENSE RECORDS

Agency	Reason	Statutory Reference
State Personnel Director	Merit System Qualification	36.180
Governor and Legislature	Impeachment or Removal from Office	106.020 286.020
School Boards	Termination of Teachers	168.114
Applicant Must Provide to Director of Division of Health	Employment as Ambulance Technician, Technician Apprentice, or Nursing Home Administrator	190.135 190.150 198.415
Department of Revenue	Check Eligibility for Hardship Driving Privilege	302.309
Superintendent of Insurance	Qualifications for Public Adjustor and Adjustor Solicitors	325.030
	Insurance Companies	375.141
Applicant Must Provide to Superintendent of Insurance	License as Insurance Agent	375.018
Missouri Board for Architects, Professional Engineers and Land Surveyors	Licensing Architects, Engineers, & Surveyors	327.441
Missouri Dental Board	Licensing Dentists and Dental Hygienists	332.321 332.331
State Board of Embalmers and Funeral Directors	Licensing Embalmers & Funeral Directors	333.121

MISSOURI

Agency	Reason	Statutory Reference
State Board of Registration for the Healing Arts	Licensing Physicians & Surgeons	334.590
State Board of Optometry (certified copy of court record required)	Licensing Optometrists	336.110
Board of Pharmacy	Licensing Pharmacists	338.055
Missouri Veterinary Medical Board	Licensing Veterinarians	340.140
Board of Nursing Home Administrators	Licensing Nursing Home Administrators	344.040
Department of Health and Welfare	Licensing Hearing Aid Personnel	346.105
Boards of Directors of Savings and Loan Associations	Qualification for election to Board of Directors	369.109
Commissioner of Securities	License as Agent (applicant must provide)	409.202 409.204
U.S. Civil Service Commission, U.S. Army, U.S. Navy, U.S. Air Force	Employment or Recruitment Eligibility	Federal Laws
County Clerk (Given by Prosecuting Attorney)	Remove Names from Eligible Voter Roles	116.080 559.470 560.610 564.710

Policy 1.1.1: The Director of the Department of Public Safety by order of the Governor of the State of Missouri shall issue policies to assure the security and privacy of criminal history record information in the state.

Policy 1.1.2: The Director of the Department of Public Safety has designated the Missouri State Highway Patrol to serve as the central repository for criminal history record information in Missouri. The Superintendent of the Missouri State Highway Patrol shall prepare and issue procedures to implement the policies approved and established by the Director of the Department of Public Safety.

Policy 1.2.1: The Department of Public Safety shall prepare a Criminal History Record Information Plan as required by the Department of Justice regulations (40 FR 49789 and 41 FR 11714).

Policy 1.3.1: The Department of Public Safety will draft legislation necessary to comply with federal laws and regulations in the privacy and security area.

Policy 1.4.1: The Missouri State Highway Patrol shall develop a system for monitoring compliance with the state criminal history record information plan and its related procedures.

Policy 1.4.2: Each criminal justice agency in Missouri which is required to comply with the federal regulations on criminal history record information shall file statements and plans for compliance with the Missouri State Highway Patrol.

Policy 1.4.3: The failure of criminal justice agencies in Missouri to comply with federal regulations on criminal history record information shall subject such agencies to a federal fine not to exceed $10,000, the termination of LEAA funds, and the loss of access to criminal history record information.

Policy 2.1.1: The official full and complete record of an offender which includes records of all NCIC criteria offenses (See Appendix VII) and dispositions will be collected, stored, and disseminated by the central site repository.

Policy 2.1.2: All criminal justice agencies in the State of Missouri shall submit fingerprint records to the Missouri State Highway Patrol on all subjects arrested for criteria offenses (as established by the NCIC uniform offense classification) for initial identification and for subsequent submission to the FBI, if required.

Policy 2.1.3: Prior to any dissemination of criminal history record information, criminal justice agencies shall query the Missouri State Highway Patrol central repository except in those cases where time is of essence and the repository is technically incapable of responding within the necessary time period.

Policy 2.2.1: The Missouri State Highway Patrol shall maintain the necessary automated data processing equipment and telecommunications and terminal facilities to provide criminal identification and criminal history record services to all criminal justice agencies in the state.

Policy 2.2.2: Criminal history record information shall include all assembled individual records which contain fingerprint identification data and notations regarding any formal criminal justice transaction involving the identified individual.

Policy 2.2.3: Procedures shall be established by all criminal justice agencies to insure that dispositions of all case transactions occurring in the state are reported to the Missouri State Highway Patrol central repository within thirty (30) days after occurrence for inclusion on arrest records available for dissemination. Each disposition reported by a criminal justice agency to the Missouri State Highway Patrol must be supported by a fingerprint impression of the right index finger.

Policy 2.2.4: All criminal justice agencies in Missouri shall adopt a common technique for assigning a unique tracking number to each arrest incident to facilitate tracking of all transactions subsequent to the arrest and to provide accurate reference to original source documents.

Policy 2.3.1: The Missouri State Highway Patrol shall develop and implement a delinquent disposition report monitoring system for criminal history record information offenses.

Policy 2.3.2: Upon finding inaccurate criminal history record information of a material nature, the disseminating agency(s) shall correct its records and notify all agencies or individuals known to have received such information.

Policy 3.1.1: Criminal justice agencies which disseminate criminal history record information shall execute user agreements with any receiving agency.

Policy 3.1.2: The Missouri State Highway Patrol shall prepare and execute user agreements with criminal justice agencies to control the access and dissemination of criminal history record information received from the central repository.

Policy 3.1.3: The Missouri State Highway Patrol shall prepare and execute user agreements with authorized non-criminal justice agencies to control the access and dissemination of criminal history record information received from the central repository.

Policy 3.2.1: Any criminal justice agency which places limitations on dissemination of conviction data or data relating to pending cases shall file with the Director of the Department of Public Safety a statement explaining and describing such limitations.

Policy 3.2.2: Juvenile records will not be disseminated in Missouri except by order of the court as referenced in Chapter 211 of the revised statutes of Missouri.

Policy 4.2.1: The Director of the Department of Public Safety shall cause an annual audit to be performed on the Missouri State Highway Patrol central repository to assess compliance with all criminal history record information laws, regulations, and policies.

Policy 4.2.2: The Missouri State Highway Patrol shall perform an annual audit of a representative sample of criminal justice agencies in the State of Missouri to assess compliance with all criminal history record information laws, regulations and policies.

Policy 5.1.1: All criminal justice agencies shall implement procedures to protect against unauthorized access to criminal history record information systems.

Policy 5.2.1: Before any dissemination of criminal history record information takes place the disseminating agency must assure that the potential recipient is an agency or individual permitted to receive information.

Policy 5.3.1: All criminal justice agencies shall implement procedures to ensure the physical security of criminal history record information.

Policy 5.4.1: The central site repository will provide training to acquaint criminal justice agencies/employees with privacy and security laws, regulations and policieis.

Policy 5.5.1: All criminal justice agencies shall adopt security standards for staff working with criminal history record information.

Policy 6.1.1: The Department of Public Safety shall develop and issue standards and procedures to insure the individual's right to access and review criminal history record information maintained at the central site repository.

Policy 6.2.1: The Director of the Department of Public Safety shall establish a procedure to provide for administrative review and the necessary correction of any claim by an individual to whom the information relates that the criminal history record information is inaccurate or incomplete.

Policy 6.2.2: All appeals for administrative review of challenged information shall be directed to the Director of the Department of Public Safety.

Policy 6.2.3: The central site repository and other agencies which disseminate criminal history record information will develop a system for notifying prior recipients of erroneous criminal history record information.

STATE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION

80-2001. Bureau under prison warden—appointment of supervisor. The state bureau of criminal identification and investigation is under the immediate supervision of the warden of the state prison. The warden shall appoint a supervisor of the bureau with the approval of the director of institutions.

History: En. Sec. 32, Ch. 199, L. 1965.

Collateral References
States⇐45.
81 C.J.S. States § 66.

80-2002. Files of identification information — warden and superintendents to furnish information — co-operation with law officers. The supervisor shall procure and file for record photographs, pictures, descriptions, fingerprints, measurements and other pertinent information of all persons who have been convicted of a felony within the state, and of other well-known and habitual criminals. The warden or superintendents of all institutions shall furnish such material to the supervisor of the state bureau of criminal identification on request. The supervisor shall co-operate with and assist sheriffs, chiefs of police and other law officers in the establishment of a complete state system of criminal identification.

History: En. Sec. 33, Ch. 199, L. 1965.

Collateral References
Criminal Law⇐1222.
24B C.J.S. Criminal Law § 2008.

80-2003. Fingerprints to be taken and forwarded on felony arrests — information on previous criminal record—destruction of information on acquittal. Sheriffs, chiefs of police and all other law enforcement officers shall take the fingerprints of a person arrested for a felony on forms furnished by the supervisor and forward them with other information requested by the supervisor to the bureau. The supervisor shall compare the description received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the official having custody of the person arrested. If a person is found innocent of the offense charged, the fingerprints and description shall be destroyed.

80-2005. Co-operation with F.B.I. and other states. The supervisor shall co-operate with identification bureaus in other states and with the Federal Bureau of Investigation to develop and carry on a complete interstate and international system of criminal identification and investigation.

History: En. Sec. 36, Ch. 199, L. 1965.

80-2006. Assistance and instruction of local officers. The supervisor shall assist and, when practicable, instruct sheriffs, chiefs of police and other law officers in establishing efficient local bureaus of identification in their districts, and in making them proficient in procuring and maintaining fingerprint records.

History: En. Sec. 37, Ch. 199, L. 1965.

82-414. Division of criminal investigation created—appointment and qualifications. (1) There is hereby created a permanent division of criminal investigation within the office of the state attorney general.

(2) The attorney general shall appoint such agents and other necessary assisting personnel and fix their compensation.

(3) Each agent shall be a person qualified by experience, training and high professional competence in criminal investigation. Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel.

82-415. Definition of term. As used in this act:

"Agent" means a person appointed to the division of criminal investigation within the attorney general's office.

82-416. Powers and duties of agents. An agent shall have the power and duty to:

(1) Assist city, county, state and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) Assist various law enforcement schools held in the state for law officers when requested;

(3) Co-operate with the bureau of criminal identification and investigation;

(4) Act as a peace officer as defined in the laws of Montana when engaged in assisting or acting under the direction of city, county, state and federal law agencies as provided in this section.

History: En. Sec. 3, Ch. 176, L. 1967; amd. Sec. 3, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted "An agent" for "The investigator" at the beginning of the section; and added subdivision (4).

82-417. Access to files of division of criminal investigation. A person with a known criminal record shall not be permitted access to the files of the division of criminal investigation, nor shall anyone else, without the order of a district judge or a supreme court justice.

82-419. State agencies to co-operate with division of criminal investigation. All state departments and agencies shall co-operate with such agents and assisting personnel in providing transportation, educational and laboratory facilities for their use when so requested.

82-421. Training co-ordinator for county attorneys. There is created, within the department of justice, a training co-ordinator for county attorneys.

82-423. Functions of training co-ordinator. The training co-ordinator shall perform the functions assigned by the department head. The functions may include, but are not limited to, the following:

(1) providing local training in current aspects of the criminal law for county attorneys and other law enforcement personnel;

(2) assisting in developing and disseminating standards, procedures and policies which will ensure that criminal laws are applied consistently and uniformly throughout the state of Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs and other relevant criminal law information;

(4) providing assistance with research, briefs or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function.

CHAPTER 39—TELETYPEWRITER COMMUNICATIONS SYSTEM FOR LAW ENFORCEMENT

Section
82-3901. Establishment of communications system—inclusion of other state agencies.
82-3902. Appointment of communications committee—members—term of office—vacancies—meetings—compensation—duties.
82-3903. Powers of attorney general in carrying out provisions of act—operational charges—assessments.
82-3904. Participation in system by local and other agencies.
82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements.
82-3906. Attorney general's report.

82-3901. Establishment of communications system—inclusion of other state agencies. The attorney general is hereby authorized to establish a permanent law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype, and is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

82-3904. Participation in system by local and other agencies. Any county, city, or other law enforcement agency may, with approval of the committee and the attorney general, connect to the system and participate in it upon payment of, or agreement to pay, those costs established by the committee.

History: En. Sec. 4, Ch. 1, Ex. L. 1967; amd. Sec. 4, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements. The attorney general is hereby directed to contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general is hereby authorized to sign agreements with the federal agencies, subject to approval of the communications committee, and any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited to the credit of the communication fund and shall be used, if at all possible, to reduce the spending of moneys as herein appropriated from the general fund.

82A-1201. Department of justice—creation—head. There is created a department of justice. The department head is the attorney general.

History: En. 82-1201 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" in the first sentence.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 3-72, dated Aug. 30, 1972, effective Sept. 1, 1972.

82A-1202. Agencies abolished—functions transferred to department. (1) The state bureau of criminal identification and investigation, provided for in Title 80, chapter 20, R. C. M. 1947, is abolished, and its statutory functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state bureau of criminal identification and investigation means the department of justice.

(2) The position of criminal investigator created within the office of the attorney general in Title 82, chapter 4, R. C. M. 1947, is abolished, and the functions of the position are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of criminal investigator means the department of justice.

(3) The state law enforcement teletypewriter communications committee, provided for in Title 82, chapter 39, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the law enforcement teletypewriter communications committee means the department of justice.

(4) The Montana law enforcement academy advisory board, provided for in Title 75, chapter 52, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana law enforcement academy advisory board means the department of justice.

(5) The office of state fire marshal, created in Title 82, chapter 12, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the office of state fire marshal means the department of justice.

(6) The state building code council, created in Title 69, chapter 21, R. C. M. 1947, is abolished, and its functions are transferred to the department of administration. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state building code council means the department of administration.

82A-1207. Board of crime control—creation—continued—transfer—composition. (1) The administratively created agency known as the governor's crime control commission is hereby created by law as the board of crime control, and its functions are continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in 82A-108. However, the board may hire its own personnel, and 82A-108(2)(d) does not apply.

(3) The board is composed of 18 members appointed by the governor in accordance with 82A-112, but 82A-112(2)(b) does not apply, and members are to be appointed in accordance with any special requirements of Title I of the Omnibus Crime Control and Safe Streets Act, as amended. The board shall be representative of state and local law-enforcement and criminal justice agencies, including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime and shall include representatives of citizens and professional and community organizations, including organizations directly related to delinquency prevention.

(4) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board shall perform the functions assigned to it under that act. The board shall have the authority to establish minimum qualifying standards for employment of peace officers, whose primary responsibility as authorized by law includes either the prevention and detection of crime or supervision of the enforcement of the penal, traffic, or fish and game laws of this state and its political subdivisions, require basic training for such officers, establish minimum standards for equipment and procedures and for advanced in-service training for such officers and establish minimum standards for any law enforcement training schools administered by the state or any of its political subdivisions of agencies, to insure the public health, welfare and safety. The board may waive the minimum qualification standard for good cause shown.

History: En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. Sec. 1, Ch. 202, L. 1977.

Amendments

The 1973 amendment added the second sentence to subsection (4).

The 1977 amendment increased the size of the board from 16 to 18 members in subsection (3); added "in accordance with 82A-112 * * * as amended" to the end of the first sentence of subsection (3); rewrote the second sentence of subsection (3) which read "The board shall be representative of state and local law enforcement agencies and units of general local government"; inserted "whose primary responsibility * * * its political subdivisions" in the second sentence of subsection (4); deleted a former subsection (5) which provided for the continuation of the governor's crime control commission prior to the effective date of this section and that members of that commission should sit as board members under this section for the remainder of the then sitting governor's term; deleted a former subsection (6) which contained provisions now incorporated into subsection (3); and made minor changes in phraseology and style.

Effective Date

Section 2 of Ch. 61, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 25, 1973.

82A-1209. References. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of law enforcement and public safety means the department of justice.

84-712. Public records; free examination; memorandum and abstracts. Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

Source: R.S.1866, c. 44, § 1, p. 297; R.S.1913, § 5595; C.S.1922, § 4902; Laws 1925, c. 146, § 1 p. 381; Laws 1927, c. 193, § 1, p. 551; C.S.1929, § 84-712; R.S.1943, § 84-712; Laws 1961, c. 454, § 3, p. 1383.

Dockets of justice containing entry of judgments are public records. State ex rel. Newby v. Ellsworth, 61 Neb. 444, 85 N.W. 439.

Party was not entitled to inspection of certified copy of court reporter's record before same is offered in evidence. Spielman v. Flynn, 19 Neb. 342, 27 N.W. 224.

Any person interested may examine records without charge, and fee book of clerk of court is public record. State v. Meeker, 19 Neb. 106, 26 N.W. 620.

Numerical indexes of instruments concerning title to real estate kept by county clerk are public records. State ex rel. Miller v. Sovereign, 17 Neb. 173, 22 N.W. 353.

84-712.01. Public records; right of citizens; full access. Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt or other record of receipt, cash or expenditure involving public funds is involved in order that the citizens of this state shall have full rights to know of, and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

Source: Laws 1961, c. 454, § 2, p. 1383.

84-712.03. Public records; denial of rights; remedies; violation; penalties. Any person denied any rights granted by sections 84-712 to 84-712.03 may file for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county or political subdivision officer who has custody of said public record can be served. Any official who shall violate the provisions of sections 84-712 to 84-712.03 shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding three months.

Source: Laws 1961, c. 454, § 5, p. 1384.

Nebraska Commission on Law Enforcement and Criminal Justice

J. James Exon
Governor

Harris R. Owens
Executive Director

RULE AND
RUGULATION NO. 3

September 26, 1975

RULE AND REGULATION GOVERNING ACCESS BY INDIVIDUALS TO THEIR CRIMINAL RECORDS

PURPOSE: To insure that an individual may have the right of access to criminal history information maintained on such individual by any criminal history record information system operated by any agency of the State of Nebraska or by any unit or agency of any political subdivision of the State of Nebraska.

1. SCOPE: This regulation shall apply to all criminal justice agencies in the State of Nebraska.

2. AUTHORITY: This regulation is adopted in accordance with the provisions of Article 9, Chapter 84, Reissue Revised Statutes of Nebraska, 1943, as amended to date, and pursuant to the authority contained in Section 81-1423(1), (5), (8), (9) and (14), R.R.S., 1943, as amended by L.B. 427, Laws of Nebraska, 1975.

   These rules are intended and designed to meet the requirements imposed upon the State of Nebraska by the addition of Part 20 to Chapter I of Title 28 of the Code of Federal Regulations, effective June 19, 1975, as such Part 20 was published in the Federal Register on Tuesday, May 20, 1975, Vol. 40, No. 98, page 22114.

3. EFFECTIVE DATE: This regulation shall become effective December 15, 1975.

4. RECORD REVIEW: Any individual who asserts that he has reason to believe that criminal history information relating to him is maintained by any Nebraska system shall be entitled to review such information by making application to the agency operating such system. The application shall include name, date and place of birth, and a set of fingerprint impressions taken upon fingerprint cards or forms commonly used for law enforcement purposes by law enforcement agencies.

Mailing Address: State Capitol Building — Lincoln, Nebraska 68509 — Office Location: 1420 "P" St. 402/471-219

5. APPLICATION: Where the application is directed to:

   a. The system operated by the Nebraska State Patrol, any resident of Lancaster County or any county contiguous thereto (Gage, Saline, Seward, Butler, Saunders, Cass, Otoe, Johnson), shall make application at the headquarters of the Nebraska State Patrol at 14th & Burnham Streets in Lincoln, Lancaster County, Nebraska; residents of other counties are encouraged to make their applications at such headquarters since it is possible to obtain the necessary information at that location and to handle their applications both expeditiously and in a confidential manner, but may make them at the office of the sheriff of their county or at any police department within their county having facilities for the taking of fingerprints, and such applications shall then be immediately forwarded to the headquarters of the Nebraska State Patrol.

   b. A Nebraska system operated by a unit or agency of local government or State system other than that operated by the State Patrol, it shall be made directly to the operator of such system.

6. PROCEDURE: Where the application is made at the headquarters of the system, the applicant shall be advised forthwith of any criminal history information contained in such system, provided that such applications shall be made during normal business hours when necessary personnel are present to retrieve the desired information. Where an application is forwarded to Nebraska State Patrol, the Patrol shall within two business days of the receipt of such application report any criminal history information back to the sheriff or local police department which forwarded the applications.

   Except as hereafter provided, the applicant shall not be given a copy of criminal history information contained in any system, but he shall be permitted to examine such information and to make notes of the contents; nor shall the applicant be given a written statement that he does not have a record in such system.

   The purpose of denying a copy of criminal history information to an applicant shall be to protect the applicant from being compelled to provide a copy of such a history, or to provide proof of a lack thereof, to persons not authorized by law to receive such information. An applicant who in fact does require a written copy for legitimate purposes shall make application therefore to the Nebraska Commission on Law Enforcement and Criminal Justice, setting forth the reasons for desiring a copy, and if the Commission, or the Executive Director thereof, concludes that it is for a legitimate and necessary purpose, then the Commission or the Director may authorize the appropriate agency to provide the applicant with a copy.

7. RECORD CHANGE: When an applicant determines that criminal history information relating to him is inaccurate or incomplete, or is being maintained in violation of law, he shall contact the agency which originated the record and request that his record be completed or corrected. The agency shall within 10 business days after receiving such request report to the applicant action taken on his request, and where changes, deletions or additions are indicated shall give assurance to the applicant that the appropriate changes or additions have been reported to the system or systems containing the incomplete or inaccurate information. Where an applicant is dissatisfied with the action taken, he shall report the matter to the Executive Director of the Nebraska Commission on Law Enforcement and Criminal Justice, who shall work with the applicant in obtaining proper corrective action. In the event that the applicant is dissatisfied with the corrective action mandated by the Executive Director, the applicant may notify the Commission in writing that he desires to appeal and the Commission shall immediately notify the applicant of its procedures in such cases and proceed to consider the appeal.

In all cases where records are corrected, the correcting agency shall report such changes to the criminal justice agencies to which it reports criminal history information on a regular basis, whether or not such changes were initiated through actions of an applicant. Upon request, an individual whose record has been corrected shall be given the names of all non-criminal justice agencies to which the data has been given, according to the records of the agency receiving such request.

The right of an individual to access and review of criminal history record information shall not extend to data contained in intelligence, investigatory, or other related files and shall not be construed to include any other information than criminal history record information, nor shall it be deemed to be extended by these regulations to records of traffic offenses maintained in this State for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operators' licenses.

8. DEFINITIONS: As used in these regulations:

a. "Criminal history record information system" or "system" means a system including the equipment, facilities, procedures, agreements and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.

b. "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.

c. "Criminal justice agency" means:

1. Courts;

2. A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

d. The "administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

e. "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement, and shall include any form of diversion from the criminal justice system. Dispositions shall also include, but not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, quilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed -- civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial -- defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

f. With reference to criminal history record information, "complete" means, in general, that arrest records should show all subsequent dispositions as the case moves through the various segments of the criminal justice system, and "accurate" means containing no erroneous information of a material nature.

9. DECLARATORY RULING: The Nebraska Commission on Law Enforcement and Criminal Justice may issue a declaratory ruling with respect to the applicability to any person or state of facts of any provision of these regulations, in accordance with the provisions of Section 84-912, Reissue Revised Statutes of Nebraska, 1943.

10. VIOLATIONS: Whenever the Nebraska Commission on Law Enforcement and Criminal Justice has in its possession information which indicates that a criminal justice agency may have violated or failed to comply with these regulations, it shall issue an order to such agency to show cause in writing why it should not be penalized for such violation or failure to comply. Such order shall be returnable within 20 days from date of issuance unless the time is extended by the Commission. If, within the time specified, the agency fails to reply to such order, or fails to show reasonable cause, the Commission may impose any or all of the following penalties:

a. Suspend, withhold, or deny grants fo funds to such agency;

b. Deny access by such agency to criminal history record information maintained by any other criminal justice agency.

An agency may appeal from such determination by following the regular appeal procedures of the Commission.

H. R. Owens

HARRIS R. OWENS
Executive Director

OPR: Courts & Legal Division
Distribution: Commission Members, Staff, Training Center, Regional Commissions, Sheriffs, Police Agencies, Nebraska State Court Administrator, Nebraska County Attorneys' Association, Nebraska Department of Correctional Services, Nebraska Probation Administration, and LEAA.

SEALING RECORDS OF CRIMINAL PROCEEDINGS

179.245 Sealing record after conviction: Petition; notice; hearing; order.

1. A person who has been convicted of any felony may, after 15 years from the date of his conviction or, if he is imprisoned, from the date of his release from actual custody, a person who has been convicted of a gross misdemeanor may, after 10 years from the date of his conviction or release from custody, and a person who has been convicted of a misdemeanor may, after 5 years from the date of his conviction or release from custody, petition the court in which the conviction was obtained for the sealing of all records relating to such conviction.

2. The court shall notify the district attorney of the county in which the conviction was obtained, and the district attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

3. If after hearing the court finds that, in the 15 years preceding the filing of the petition if the conviction was for a felony, in the 10 years preceding the filing of the petition if the conviction was for a gross misdemeanor, or in the 5 years preceding the filing of the petition, if the conviction was for a misdemeanor, the petitioner has not been arrested, except for minor moving or standing traffic violations, the court may order sealed all records of such conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private agency, company or official in the State of Nevada, and may also order all such criminal identification records of the petitioner returned to the file of the court where the proceeding was commenced from, but not limited to, the Federal Bureau of Investigation, the California identification and investigation bureau, sheriffs' offices and all other law enforcement agencies reasonably known by either the petitioner or the court to have possession of such records.

(Added to NRS by 1971, 955)

179.255 Sealing record after dismissal, acquittal: Petition; notice; hearing; order.

1. A person who has been arrested for alleged criminal conduct, where the charges were dismissed or such person was acquitted of the charge, may after 30 days from the date the charges were dismissed or

from the date of the acquittal petition the court in and for the county where such arrest was made for the sealing of all records relating to the arrest.

2. The court shall notify the district attorney of the county in which the arrest was made, and the district attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

3. If after hearing the court finds that there has been an acquittal or that the charges were dismissed and there is no evidence that further action will be brought against the person, the court may order sealed all records of the arrest and of the proceedings leading to the acquittal which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

(Added to NRS by 1971, 955)

179.265 Rehearings after denial of petition: Time for; number.

1. A person whose petition is denied under NRS 179.245 or 179.255 may petition for a rehearing not sooner than 2 years after the denial of the previous petition.

2. No person may petition for more than two rehearings.

(Added to NRS by 1971, 956)

179.275 Order sealing record: Distribution; compliance. Where the court orders the sealing of any record pursuant to NRS 179.245 or 179.255, a copy of the order shall be sent to each public or private company, agency or official named in the order, and such organization or individual shall seal the records in its custody which relate to the matters contained in the order, shall advise the court of its compliance, and shall then seal the order.

(Added to NRS by 1971, 956)

179.285 Order sealing records: Effect. If the court orders the records sealed pursuant to NRS 179.245 or 179.255, all proceedings recounted in the record are deemed never to have occurred, and such person may properly answer accordingly to any inquiry concerning the arrest, conviction or acquittal and the events and proceedings relating to the arrest, conviction or acquittal.

(Added to NRS by 1971, 956)

179.295 Reopening of sealed records.

1. The person who is the subject of the records which are sealed pursuant to NRS 179.245 or 179.255 may petition the district court to permit inspection of the records by a person named in the petition, and the district court may order such inspection. Except as provided in subsection 2, the court may not order the inspection of the records under any other circumstances.

2. Where a person has been arrested and the charges dismissed and the records of such arrest have been sealed, the court may order the inspection of the record by the district attorney upon a showing that as a result of newly discovered evidence, such person has been arrested for the same or similar offense and that there is sufficient evidence reasonably to conclude that such person will stand trial for the offense.

3. The court may, upon the application of a district attorney or an attorney representing a defendant in a criminal action, order an inspection of such records for the purpose of obtaining information relating to persons who were involved in the incident recorded.

(Added to NRS by 1971, 956)

453.336 Offenses and penalties: Unlawful possession; penalties.

1. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the provisions of NRS 453.011 to 453.551, inclusive.

2. Except as provided in subsections 3 and 4, any person who violates this section shall be punished:

(a) For the first offense, if the controlled substance is listed in NRS 453.161, 453.171, 453.181 or 453.191, by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than $2,000.

(b) For a second offense, if the controlled substance is listed in NRS 453.161, 453.171, 453.181 or 453.191, or if, in case of a first conviction of violation of this section, the offender has previously been convicted of any violation of the laws of the United States or of any state, territory or district relating to a controlled substance, the offender shall be punished by imprisonment in the state prison for not less than 1 year nor more than 10 years and may be further punished by a fine of not more than $2,000.

(c) For a third or subsequent offense, if the controlled substance is listed in NRS 453.161, 453.171, 453.181 or 453.191, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, the offender shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years and may be further punished by a fine of not more than $5,000.

(d) For the first offense, if the controlled substance is listed in NRS 453.201, by imprisonment in the county jail for not more than 1 year, and may be further punished by a fine of not more than $1,000.

(e) For a second or subsequent offense, if the controlled substance is listed in NRS 453.201, by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than $2,000.

3. Any person who is under 21 years of age and is convicted of the possession of less than 1 ounce of marihuana:

(a) For the first offense:

(1) Shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than $2,000; or

(2) Shall be punished by imprisonment in the county jail for not more than 1 year, and may be further punished by a fine of not more than $1,000, and may have his driver's license suspended for not more than 6 months.

(b) For the second offense shall be punished in the manner prescribed by subsection 2 for a first offense.

(c) For a third or subsequent offense, shall be punished in the manner prescribed by subsection 2 for a second offense.

4. Before sentencing under the provisions of subsection 3, the court shall require the parole and probation officer to submit a presentencing report on the person convicted in accordance with the provisions of NRS 176.195. After the report is received but before sentence is pronounced the court shall do the following:

(a) Interview the person convicted and make a determination as to the rehabilitation potential of the individual; and

(b) Conduct a hearing at which evidence may be presented as to the rehabilitation potential and any other relevant information received as to whether the person convicted of the offense shall be adjudged to have committed a felony or to have committed a gross misdemeanor.

5. Three years after the person has been convicted and sentenced under the provisions of subsection 3, the court may order sealed all records, papers and exhibits in such person's record, minute book entries and entries on dockets, and other records relating to the case in the custody of such other agencies and officials as are named in the court's order, if:

(a) The person fulfilled all the terms and conditions imposed by the court and by the parole and probation officer; and

(b) The court, after hearing, is satisfied that the rehabilitation has been attained.

6. Whenever any person who has not previously been convicted of any offense under the provisions of NRS 453.011 to 453.551, inclusive, or under any statute of the United States or of any state relating to narcotic drugs, marihuana or stimulant, depressant or hallucinogenic drugs pleads guilty to or is found guilty of possession of a controlled substance under this section, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions.

7. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him.

8. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for a second or subsequent convictions under the provisions of NRS 453.011 to 453.551, inclusive.

9. There may be only one discharge and dismissal under this section with respect to any person.

(Added to NRS by 1971, 2019; A 1973, 1214)

COMMISSION ON CRIMES, DELINQUENCY AND CORRECTIONS

216.085 Commission on crimes, delinquency and corrections: Creation; purposes.

1. There is hereby created as an independent agency within the executive department of this state the commission on crimes, delinquency and corrections.

2. The purposes of the commission are:

(a) to develop a comprehensive statewide plan for the improvement of law enforcement throughout the state;

(b) to define, develop, correlate and administer programs and projects for the state and units of general local government in the state or for any combination of the state and units of general local government for improvements in law enforcement;
(c) to establish priorities for the improvement of law enforcement throughout the state; and
(d) to provide for the general direction and operation of the department of law enforcement assistance and to delegate to the director such authority as the commission deems necessary to carry out the provisions of NRS 216.185 to 216.285, inclusive.
(added to NRS by 1969,732; A 1971,1097)

216.095 Members: Number; qualifications; appointment; expenses; designation of chairman; appointment of nonvoting advisory members.
1. The commission shall consist of a chairman and 16 members, who shall:
(a) be representative of law enforcement agencies of the state and units of general local government within the state.
(b) be appointed by and responsible to the governor.
(c) serve at the pleasure of the governor.
2. The governor shall appoint a chairman of the commission.
3. The governor may appoint additional persons, who shall act in nonvoting advisory capacities to the commission.
4. Members of the commission shall serve without compensation but may be reimbursed from commission funds for necessary travel and per diem expenses in the amounts provided by law. (added to NRA by 1969,732)

216.105 Powers of commission. The commission may:
1. Apply for and accept grants and allocations awarded under the Crime Control Act, under the Delinquency Control Act or by any agency of the Federal Government.
2. Accept gifts or donations of funds, services, materials or property from any source and use such gifts or donations for the proper administration of the commission.
3. Contract with public agencies, private firms or individuals for such goods, services and facilities as may be necessary to develop and implement a statewide law enforcement and delinquency control plan.
(added to NRS by 1969, 732)

216.115 Director: Appointment; unclassified service; salary. The commission shall be administered by a director, who shall:
1. Be appointed by and responsible to the governor.
2. Serve at the pleasure of the governor.
3. Be in the unclassified service of the State of Nevada under chapter 284 of NRS.
4. Receive an annual salary in the amount specified in NRS 284.182.
(added to NRS by 1969, 732; A 1971, 1097)

216.125 Director's powers. The director has the following powers:
1. To call and conduct any meetings which may be necessary for the administration of the commission.
2. To appoint within the limits of legislative appropriations and pursuant to chapter 284 of NRS any necessary personnel for the commission or the department.
3. To do all things necessary for the proper performance of the functions of the commission and administration of NRS 216.085 to 216.125, inclusive, and NRS 216.185 to 216.285 inclusive.
4. To appoint, with the consent of the commission, a chief of each of the divisions in the department.
5. To develop qualifications for the positions of division chief for approval by the commission and submission to the personnel division of the department of administration for implementation.
(added to NRS by 1969, 733; a 1971, 1097)

216.130 Commission to provide summary, analysis of reports concerning interception of wire, oral communications. The commission shall, on or before April 30 of each year, compile a report which provides a summary and analysis of all the reports submitted to the commission pursuant to NRS 179.515. Such report shall be open to inspection by the general public.
(added to NRS by 1975, 1519)

PEACE OFFICERS' STANDARDS AND TRAINING COMMITTEE

216.135 Peace officers' standards and training committee: Establishment; members' purpose.
1. There is established within the commission a peace officers' standards and training committee consisting of five members, who shall be appointed by the governor from the membership of the commission.
2. The purpose of the committee is to provide for and encourage training and education of peace officers in order to improve law enforcement and to develop methods for the prevention and reduction of crime and for the detection and apprehension of criminals.
(added to NRS by 1969, 733)

216.146 Officers; quorum.
1. The committee shall elect one of its members as chairman and one of its members as vice chairmen.
2. At any meeting, three members shall consitutue a quorum. (added to NRS by 1965, 723; A 1969,733) -- (substituted in revision for NRS 216.020)

216.155 Rules of minimum standards: Adoption; amendment; applicability. For the purpose of raising the level of competency of state and local law enforcement officers, the committee shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental and moral fitness which shall govern the recruitment of any unit of general local

government or of any state agency employing peace officers. (added to NRS by 1965, 723; A 1969,733)--(substituted in revision for NRS 216.060)

216.165 Place of training; approved existing institutions. In establishing standards for training, the committee may, as far as is consistent with the purposes of this chapter, permit required training to be obtained at existing institutions approved by the committee. (added to NRS by 1965, 724; A 1969,733)--(substituted in revision for NRS 216.070)

216.175 Adherence to standards. The committee shall make such inquiries as may be necessary to determine whether the stated and every unit of general local government is adhering to the standards for recruitment and training established by the committee. (added to NRS by 1965, 724; A 1969, 733)--(substituted in revision for NRS 216.080)

DEPARTMENT OF LAW ENFORCEMENT ASSISTANCE

216.185 Definitions. As used in NRS 216.185 to 216.285, inclusive:

1. "Department" means the department of law enforcement assistance.
2. "Director" means the director of the commission on crimes, delinquency and corrections. (added to NRS by 1971, 1094)

216.195 Department of Law Enforcement Assistance: Creation; divisions.

1. The Department of Law Enforcement Assistance is hereby created.
2. The Department shall consist of a director and the following divisions:
   (a) Planning and Training Division.
   (b) Identification and Communications Division.
   (c) Investigation and Narcotics Division.

(added to NRS by 1971, 1094)

216.215 Division chiefs: Qualifications; classified service; duties.

The chief of each division shall:

1. Possess the qualifications as prescribed by the director and approved by the commission.
2. Be in the classified service of the state pursuant to chapter 284 of NRS.
3. Administer the provisions of law relating to his divisions, subject to the administrative direction of the director.

(added to NRS by 1971, 1094)

216.225 Chief of Planning and Training Division: Duties. The

chief of the Planning and Training Division shall:

1. Develop a comprehensive, statewide plan for the improvement of law enforcement throughout the state, which shall be submitted to the Director and the commission for approval.

2. Define, develop and correlate programs and projects for the state and political subdivisions within the state or for this state and other states for improvement in the law enforcement, and carry out the recommendations of the peace officer's standards and training committee.

3. Establish priorities for improvement in law enforcement throughout the state.

4. Provide for the administration of grants under the Crime Control Act under guidelines set forth by the director.

5. Do all things necessary to enable the department to perform properly its duties, including, but not limited to, seeking the cooperation of local units of government and state agencies, boards and commissions relative to criminal justice recruitment and training.

(added to NRS by 1971, 1095)

216.235 Chief of Identification and Communications Division: Duties: The chief of the Identification and Communications Division shall:

1. Provide for a system of collecting all photographs, fingerprints, descriptions, measurements of and information on all persons who have been convicted of a felony, and all well-known and habitual criminals, and such other persons as may be arrested for or charged with the commission of a crime.

2. Furnish, upon application, to all peace officers of the state, other states, the United States, and territories or possessions of the United States, or to peace officers of other countries duly authorized to receive it, all information pertaining to the identification of any person, a plate, photograph, description, measurement or any data of which person there is a record in the division.

3. Acquire, within the limits of legislative appropriations, a communications system for the identification, investigation and apprehension of criminals.

4. Purchase or cause to be purchased or acquired the necessary furniture, fixtures, apparatus, appliances and equipment for:

(a) The collection, filing and preservation of all records, fingerprints, photographs, descriptions and modus operandi, both as to identification and investigation of criminals and of stolen lost, found, purchased and pawned property;

(b) the examination of questioned documents and latent fingerprints; and

(c) the establishment of division laboratories in which the examination, analysis and testing of physical evidence and other materials may be conducted.

5. Provide for an adequate filing system, and file all plates, photographs, fingerprints, measurements, descriptions, crime investigation reports, bulletins, lost, stolen and pawned property reports, modus operandi information and other pertinent information received or procured.

6. Make or cause to be made a complete and systematic record and index system, which will provide a convenient method of consultation and

and comparison.

7. Utilize, whenever possible, existing state or local facilities including but not limited to data processing resources and records depositories.

8. When requested by commission, require each chief of police, sheriff, coroner, district attorney, city attorney, probation officer, the department of human resources, the state board of parole commissioners, the state board of pardons commissioners, the board of state prison commissioners, the supreme court, district courts, justices' courts, municipal courts, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents to:

(a) install and maintain records needed for the correct reporting of statistical data required by the commission.

(b) report statistical data to the commission, at such times and in such manner as the commission prescribes.

(c) give the commission or its agents access to statistical data for the purposes of carrying out the provisions of this chapter. (added to NRS by 1971, 1095; A 1973, 1406)

216.245 Chief of Investigation and Narcotics Division: Duties. The chief of the Investigation and Narcotics Division shall:

1. Furnish criminal investigative services, including the interrogation of persons by use of polygraph, upon the request of the attorney general or any sheriff, chief of police or district attorney of the State of Nevada.

2. Promote and operate programs to disseminate information to the people of this state concerning the dangers of the use of controlled substances, as defined in chapter 453 of NRS, and dangerous drugs.

3. Provide, in cooperation with the chief of the identification and communications division, a system of recording all information received by the division relating to persons who have alledged connections with organized crime or have some connection with the violations of laws regulating controlled substances, as defined in chapter 453 of NRS, or dangerous drugs.

4. Arrange for the purchase of controlled substances, as defined in chapter 453 of NRS, and dangerous drugs when such purchase is necessary in the investigation of offenses concerning them.

5. Procure from district and city attorneys, the warden of the state prison, the superintendents of juvenile detention facilities, the chief administrative officers of hospitals and institutions for the care of the mentally ill, from juvenile probation officers and from every sheriff and chief of police and from any other reliable source information concerning violators of laws regulating controlled substances, as defined in chapter 453 of NRS, or dangerous drugs, and their character, background, probable motivations, circumstances of arrest, modus operandi and other information.

6. Enforce the provisions of chapter 453 of NRS.

7. Furnish, upon application from a law enforcement agency, all information pertaining to any person of whom there is a record. (added to NRS b6 1971, 1096; A 1973, 131)

216.250 Acceptance of funds made available for programs of department. The department of law enforcement assistance may accept:

1. Funds appropriated and made available by any Act of Congress for any program administered by the department or any of its divisions as provided by law.

2. Funds and contributions made available by a county, a city, a public district or any political subdivision of this state for any program administered by the department or any of its divisions as provided by law.

3. Funds, contributions, gifts, grants and devices made available by a public or private corporation, by a group of individuals, or by individuals for any program administered by the department or any of its divisions as provided by law.

(added to NRS by 1973, 130)

216.255 Sale of informational materials pertaining to narcotic, dangerous drugs. The chief of the Investigation and Narcotics Division may fix reasonable fees for the sale of miscellaneous printed materials pertaining to narcotic and dangerous drugs which are purchased or prepared by the investigation and narcotics division.
(added to NRS by 1971, 1096)

216.265 Investigation and narcotics receipts fund: Creation; use.

1. The investigation and narcotics receipts fund is hereby created in the state treasury for the use of the investigation and narcotics division.

2. All fees and moneys received by such division under NRS 216.255 shall be deposited in such fund.

3. All moneys in such fund shall be paid out on claims approved by the director as other claims against the state are paid.
(added to NRS by 1971, 1096)

216.275 Investigative fund: Creation; use.

1. There is hereby created the investigative fund in the state treasury.

2. The director may, from time to time, withdraw from such fund such sums as he determines necessary to assist local law enforcement agencies or the investigative and narcotics division in the purchase of narcotic or dangerous drugs for evidence and in the employment of persons other than peace officers to obtain evidence. The director may keep such sums in a bank account or in cash.

3. Upon the written request of the director for the withdrawl of any such sum, the state controller is directed to draw his warrant in favor of the director in an amount not to exceed the legislative appropriation or any limitations set on such appropriation by the legislature.
(added to NRS by 1971, 1097)

216.290 Sheriffs, police chiefs to furnish information. Every sheriff and chief of police shall furnish to the department, on forms prepared by the department, all information obtained in the investigation

or prosecution of any person who has allegedly violated any criminal law of this state when in the investigation of such violation it appears that there is some connection with controlled substances, as defined in chapter 453 of NRS or dangerous drugs.
(added to NRS by 1973, 131)

IN GENERAL

239.010 Public books, records open to inspection; penalty.

1. All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporation officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, shall be open at all times during office hours to inspection by any person, and the same may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the same may be used to the advantage of the owner thereof or of the general public.

2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.

[1:149:1911; RL § 3232; NCL § 5620]—(NRS A 1963, 26; 1965, 69)

239.030 Furnishing of certified copies of public records. Every officer having custody of public records, the contents of which are not declared by law to be confidential, shall furnish copies certified to be correct to any person who requests them and pays or tenders such fees as may be prescribed for the service of copying and certifying.

[1:73:1909; RL § 2045; NCL § 2976]—(NRS A 1973, 353)

STATE POLICE - R.S.A. 106-B:14

106-B:14 Criminal Records, Reports. With the approval of the commissioner of safety, the director shall make such rules and regulations as may be necessary to secure records and other information, relative to persons who have been convicted of a felony or an attempt to commit a felony within the state, or who are known to be habitual criminals, or who have been placed under arrest in criminal proceedings. Such records and information shall not be open to the inspection of any person except those who may be authorized to inspect the same by the director. The clerks of the superior and municipal courts, or if there is no clerk the justice thereof, sheriffs, deputy sheriffs, police officers, jailers, and superintendents of houses of correction shall secure and forward to the director all such information as he may direct relative to persons brought before said courts or arrested or in the custody of such officers. Any person violating the provisions of this section or any rule or regulation made hereunder shall be guilty of a violation for each offense.

CHAPTER 7-A

INFORMATION PRACTICES ACT

7-A:1 Definitions. In this chapter:

I. "Agency" means each state board, commission, department, institution, officer or other state official or group other than the legislature or the courts.

II. "File" means the point of collection of personal identifiable information.

III. "Machine-accessible" means recorded on magnetic tape, magnetic disk, magnetic drum, punched card, optically scannable paper or film, punched paper tape or any other medium by means of which information can be communicated to data processing machines.

IV. "Personal information" means any information that by some specific means of identification, including but not limited to any name, number, description, and including any combination of such characters, it is possible to identify with reasonable certainty the person to whom such information pertains.

V. "Personal information system" means any method by which personal information is collected, stored or disseminated by any agency of the state.

VI. "Responsible authority" means the head of any governmental agency which is responsible for the collection and use of any data on persons or summary data.

Source. 1975, 492:1, eff. June 24, 1975.

7-A:2 File with Secretary of State. On or before July 1, 1976, all state agencies shall file with the secretary of state the following information with respect to all personal information systems, except those consisting of criminal investigation files, maintained by said agency:

I. The name of the system.

II. The purpose of the system.

III. The number of persons on whom personal information is maintained in the system.
IV. Categories of personal information maintained in the system.
V. Categories of the sources of the personal information in the system.
VI. Descriptions of the uses made of the personal information.
VII. Categories of users of the personal information.
VIII. Practices regarding the place and method of personal information storage in the system including but not limited to whether or not the personal information is machine-accessible.
IX. Length of time of retention of personal information in the system.
X. Method of disposal of personal information in the system.
XI. Names and positions of the personnel responsible for maintaining the system.
XII. Persons or agencies having a right of access to the personal information in the system.

Source. 1975, 492: 1, eff. June 24, 1975.

7-A: 3 **Changes in Purposes, Uses, etc.** The agency shall immediately file with the secretary of state any changes in the information required to be filed with the secretary of state by RSA 7-A: 2, except RSA 7-A: 2, III, and the secretary of state shall annex said changes to the original filing and preserve all filings. Any changes in the information required by RSA 7-A: 2, III shall be filed with the secretary of state no less often than annually.

Source. 1975, 492: 1, eff. June 24, 1975.

7-A: 4 **Public Record.** All information filed with the secretary of state pursuant to the provisions of this chapter shall be deemed public records.

Source. 1975, 492: 1, eff. June 24, 1975.

7-A: 5 **Report to General Court.** The secretary of state shall provide to the president of the senate and speaker of the house on October first of each even-numbered year a list of all state agencies that have filed information with him pursuant to RSA 7-A.

106-B: 13 **Power to Take Identification Data.** The employees shall have authority to take fingerprints and, in addition thereto, such identification data as shall be prescribed by the director of all persons taken into custody by them in the discharge of their duties.

106-B: 14 **Criminal Records, Reports.** With the approval of the commissioner of safety, the director shall make such rules and regulations as may be necessary to secure records and other information relative to persons who have been convicted of a felony or an attempt to commit felony within the state, or who are known to be habitual criminals, or who have been placed under arrest in criminal proceedings. Such records and information shall not be open to the inspection of any person except those who may be authorized to inspect the same by the director. The clerks of the superior and municipal courts, or if there is no clerk the justice thereof, sheriffs, deputy sheriffs, police officers, jailers, and superintendents of houses of correction shall secure and forward to the director all such information as he may direct relative to persons brought before said courts or arrested or in the custody of such officers. Any person violating the provisions of this section or any rule or regulation made hereunder shall be fined twenty-five dollars for each offense.

651:5 Disposition of Certain Records.

I. If a person who has been sentenced to probation or conditional discharge has complied with the conditions of his sentence, he may, at the termination of the sentence or at any time thereafter, apply to the court in which the original sentence was entered for an order to annul the record of conviction and sentence.

II. If a person who has been sentenced to unconditional discharge has been convicted of no other crime except a traffic offense during a two-year period following such sentence, he may, at any time after such two-year period, apply to the court in which the original sentence was entered for an order to annul the record of conviction and sentence.

III. If a person under twenty-one years of age at the time of his criminal act is sentenced to imprisonment and in a three-year period following his release has been convicted of no other offense except a traffic offense, he may, at any time after such three-year period, apply to the court in which the original sentence was entered for an order to annul the record of conviction and sentence.

IV. When an application has been made under paragraph I, II or III, the court shall require a probation officer to report to it concerning any convictions, arrests or prosecutions of the applicant during the periods specified in those paragraphs.

V. The court shall enter the order applied for under paragraph I, II or III if in the court's opinion the order will assist in the applicant's rehabilitation and will be consistent with the public welfare. Upon entry of the order, the applicant shall be treated in all respects as if he had never been convicted and sentenced, except that, upon conviction of any crime committed after the order of annulment has been entered, the prior conviction may be considered by the court in determining the sentence to be imposed.

VI. Procedures governing application for an entry of an order annulling a conviction shall be established by rule of court. The application, however, may be made through an attorney or by a probation officer if the applicant gives him written authorization.

VII. Upon entry of the order of annulment of conviction, the court shall issue to the applicant a certificate stating that his behavior after the conviction has warranted the issuance of the order, and that its effect is to annul the record of conviction and sentence.

VIII. In any application for employment, license, or other civil right or privilege, or in any appearance as a witness in any proceeding or hearing, a person may be questioned about a previous criminal record only in terms such as "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?".

IX. Nothing in this section shall affect any right of the applicant to appeal from his conviction or sentence or to rely on it in bar of any subsequent proceedings for the same offense.

X. A person is guilty of a misdemeanor if, during the life of another who has had a record of conviction annulled pursuant to this section, he discloses or communicates the existence of such record.

91-A:4 Minutes and Records Available for Public Inspection. Every citizen during the regular or business hours of all such bodies or agencies, and on the regular business premises of such bodies or agencies, has the right to inspect all public records, including minutes of meetings of the bodies or agencies, and to make memoranda abstracts, photographic or photostatic copies, of the records or minutes so inspected, except as otherwise prohibited by statute or section 5 of this chapter.

Source. 1967, 251:1, eff. Aug. 26, 1967.

91-A:5 Exemptions. The records of the following bodies are exempted from the provisions of this chapter:

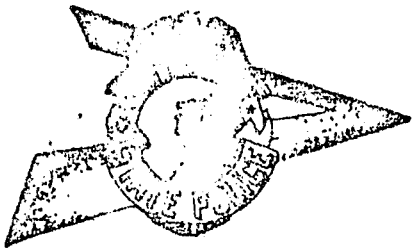
I. Grand and petit juries.

II. Parole and pardon boards.

III. Personal school records of pupils.

IV. Records pertaining to internal personnel practices, confidential, commercial, or financial information, personnel, medical, welfare, and other files whose disclosure would constitute invasion of privacy.

Source. 1967, 251:1, eff. Aug. 26, 1967.



COLONEL PAUL A. DOYON
DIRECTOR

State of New Hampshire

DEPARTMENT OF SAFETY
DIVISION OF STATE POLICE
HEADQUARTERS CONCORD, N.H. 03301

EFFECTIVE DATE	NUMBER

SUBJECT
NEW HAMPSHIRE STATE POLICE
BUREAU OF CRIMINAL
INVESTIGATION

SOP

SOP State Police, Bureau of Criminal Identification

I. PURPOSE: The purpose of this SOP is to establish operating instructions for the Department of Safety, Division of State Police, State Bureau of Criminal Identification (hereinafter referred to as the BCI), which operates under the supervision of the Supervisor, Records and Reports Unit.

II. SCOPE: This SOP establishes the administrative and unique central repository requirements of the BCI.

1. Physical Security

A. The criminal history record information manual files are housed in the Bureau of Criminal Identification at the Department of Safety, Division of State Police. As such, they are under constant police supervision and control 24 hours a day. The records section is staffed during the day by the personnel actually working on the records. At night, at other times when the bureau is not staffed, the coded records, in locked filing cabinets, are monitored by Communications personnel in the next room.

B. The physically secure building housing the Department of Safety and the Department of Public Works and Highways is surrounded by perimeter lighting at night and manned at all times by a uniformed officer, utilizing television cameras and identification logs. The building itself is constructed with protective, non-combustible material, and is in compliance with both the Life Safety Code and the National Building Code. The actual location in the interior of the building precludes damage from acts of nature. A new office building being constructed for the Department

of Safety with occupancy scheduled for January 1977, will provide security in excess of that enumerated above.

C. Access to our manual files are limited to personnel of the records section.

D. There are no back-up files.

2. Personnel Selection

A. The BCI is staffed by both uniformed and civilian members of the State Police. The over all responsibility for the administration of this operation falls to the Supervisor of the Records and Reports Unit - a uniformed officer. He is, in turn, responsible to the Commander of the Detective Bureau.

B. Civilian personnel who work with criminal records are employees of the State Police. These classified employees are hired by the Division after passing entrance examinations conducted by the Department of Personnel and after successful completion of an extensive background check designed to assess prior work habits, honesty, and suitability for this sensitive position. In actual practice, most employees in this section are prior employees of the Department of Safety who have transfered to the Division of State Police.

C. After hiring, personnel are further cautioned as to the critical nature of their functions and as to the sanctions applied for malfeasance, in addition to procedures for dismissal promulgated by the Department of Personnel. During the initial days of their employment, probationary clerks are closely monitored by the uniformed supervisor and a senior clerk. Throughout the remainder of their probation p (6 months), they are closely checked by the senior clerk.

D. All employees are required to sign a memorandum from the Director concerning the security and privacy of criminal history record information. This memorandum advises them of their responsibilities and requires compliance of the regulations designed to prevent intentional violations of this data. A copy of this memorandum is attached.

5. Limits on Dissemination

A. The BCI recognizes three classes of criminal history record information;

1. All data available at the Central repository including, but not limited to, raw arrest data, data containing not guilty and nol prossed findings, incomplete data, data regarding dispositions (supported or unsupported by arrest date), date regarding juvenile arrests and/or dispositions, and acknowledgement that a criminal record does not exist.

2. All of #1 above with the exception of juvenile date.

3. Data containing documented arrests with guilty dispositions, and data containing guilty dispositions only, as well as the acknowledgement that a record does not exist.

B. Dissemination of the above classes of data are limited to the following:

1. Police departments - class 2

2. Other criminal justice agencies - class 3

3. Non-criminal justice agencies with statutory requirements or an executive order allowing access - class 3.

4. Agencies approved by the Director, Division of State Police, under his statutory authority - class 3.

5. Individuals and agencies pursuant of a specific agreement with the State Police to provide services required for the adminstration of criminal justice pursuant to that agreement. The agreement specifically authorizes access to data, limits the use of data to purposes for which given, insures the security and confidentiality of the data consistent with these regulations and provides sanctions for violation thereof - class 1.

6. Individuals and agencies whether authorized by court order or court rule - class 1.

7. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with the SAC, said agreement simi-

lar to agreement under B5 above and conforming to section 524(a) of the act - class 1.

8. Any person, agency, or institution approved for dissemination by the Director under his statutory authority who has written authorization from the person whose record they are interested in obtaining - class 2.

9. Any individual may obtain his own record upon satisfactory identification - class 1.

C. Dissemination

1. Dissemination of criminal history record information to criminal justice agencies will require that the agencies have a certification form of file at the BCI. This certificate form will have to be on file before information can be given out. Once a form is on file, no further certification form will be required for these criminal justice agencies.

2. Non-criminal justice agencies approved for dissemination by the Director under his statutory authority, or those authorized by statute, will be required to complete a certification on a yearly basis.

3. Individuals, after executing a Right to Access form, will be allowed to view their record and receive a copy of that portion they desire to challenge.Completed access forms will be kept on file at the BCI.

a. When a copy is given to an individual, it will include the notation, "For review and challenge only and any other use thereof will be in violation of 42 USC, page 3771," or a similar warning.

4. Dissemination logs will be maintained on all copies of records given to qualified recipients. These logs will be kept in the individual jacket along with the individual master rap sheet.

5. All copies of records given out above, will include the notation to the effect that the information is given for a specified use only and that sanctions will be applied for misuse.

D. In order to insure that under no conditions will an annulled or expun-

record be disseminated, all such information will be destroyed by the Supervisor of the records and upon receipt of a court order to do same. In addition, all court orders sealed records will be carried out by the Supervisor.

4. Audit and Quality Control

A. In order to insure the accuracy of the criminal history record information at the BCI, the following source documents will be the only ones utilized as a vehicle to post information to an individual's rap sheet. (Specific clerical instructions will be promulgated by the Supervisor)

1. All notations of an arrest must be documented by a fingerprint card submitted by the arresting agency. These fingerprint cards must be classified or verified before entering the data onto the record.Fingerprint cards to support every arrest after the effective date of this SOP will be kept on file at the BCI. Only arrest records of misdemeanors and felonies of a criminal nature will be posted to an individual's criminal record.

2. All notations as to the disposition of an arrest must be supported by a court abstract. These abstracts will be cross matched, to the maximum extent feasible, to a corresponding arrest. All dispositions (guilty, not guilty, nol prossed, continued for sentence) will be entered. The Supervisor of the Records and Reports Unit will maintain an active list of those offenses not allowed on a rap sheet (e.g. intoxication, vagrancy, motor vehicle violations, Fish & Game violations, etc). All abstracts entered on a rap sheet will be maintained in the individual's jacket.

3. Strict adherence to the above requirements for posting and filing will insure the reliability of the audit trail.

B. The completeness of the criminal history record information will be insured by limiting the dissemination of arrests for which there is no disposition (class 1 and 2) to police agencies only. Arrests which show no disposition after 90 days will require a query to the police department or the corresponding court, if

it appears that a disposition will be forthcoming, prior to the dissemination of this information.

5. Annual Audits

A. The BCI will undergo a yearly audit by the Security and Privacy Committee in order to insure compliance with this SOP and the New Hampshire State Security and Privacy Plan. All resources and files of the BCI will be open to the Security and Privacy Committee at this time.

B. The Supervisor of the Records and Reports Unit or his designated representative will conduct annual audits of a representative sample of local and county law enforcement agencies. Departments to be reviewed will be selected by the Security and Privacy Staff of the SAC. Areas of consideration for this annual audit will be those suggested by the S and P staff.

6. Certification with the BCI

A. Every agency or individual who maintains or receives criminal history record information will certify with the BCI that the information is secure and dissemination is limited to a need to know basis.

B. These certifications will be kept on permanent file at the BCI. If another CJA is in doubt as to the certification of an agency or individual, they may query the BCI for certification status.

C. Violations of security and privacy of criminal history record information will result in immediate removal from the certification list of agencies or individuals pending review of the Director.

7. Individual Review and Appeal

A. Upon the receipt of a Right to Access form, the Supervisor will verify the identity of the requester and allow him to view the rap sheet. A copy of challenged entries will be provided with the proper notations.

B. When the individual challenges an entry, the determination of whether

or not to change the entry will be made by the Supervisor with the advice and consent of the Director.

C. Appeals from the BCI decision will be directed to the Security and Privacy Appeal Body.

D. Appeals from the decision of other criminal justice agencies will be given to the BCI who will investigate the complaint and forward a report to the Appeal Body.

2A:85-15. Petition to expunge or seal record of arrest after acquittal, discharge or dismissal

Any person who has been arrested for a violation of a municipal ordinance, the disorderly persons law, a misdemeanor or a high misdemeanor under the laws of New Jersey and against whom proceedings were dismissed, or who was discharged without a conviction, or who was acquitted, may at any time following the dismissal of proceedings, or the discharge without a conviction, or the acquittal, present a duly verified petition to the court in which the judgment of acquittal, discharge or dismissal was entered, or, if there were no court proceedings, to the court in whose jurisdiction the arrest occurred, setting forth all the facts in the matter and praying for the relief provided by this act.
L.1973, c. 191, § 1, eff. June 28, 1973. Amended by L.1975, c. 47, § 1, eff. April 3, 1975.

2A:85-16. Hearing; time; service of order

Upon the filing of a petition pursuant to this act the court may by order fix a time, not less than 15 nor more than 45 days thereafter, for the hearing of the matter. A copy of this order shall be served pursuant to the Rules of Court upon the Attorney General, upon the prosecutor of the county wherein the court is located, upon the chief of police or other executive head of the police department of the municipality in which the arrest occurred, and upon the chief law enforcement officer of any other law enforcement agency of this State which participated in the arrest, within 5 days from the date of the order.
L.1973, c. 191, § 2, eff. June 28, 1973.

2A:85-17. Order to expunge records; grounds; failure to object by law enforcement agencies; disposition of records

a. At the time appointed for the hearing, if there is no objection from those law enforcement agencies notified of the hearing, and no reason appears to the contrary, the court may grant an order directing the clerk of the court and the parties upon whom notice was served to expunge from their records all evidence of said arrest including evidence of detention related thereto, and specifying those records to be expunged.

b. If an order expunging the records is granted by the court, all the records specified in the order shall be removed from the files and placed in the control of a person who shall be designated to retain control over all expunged records and who shall ensure that the records or the information contained therein is not released for any reason. In response to requests for information or records on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.
L.1973, c. 191, § 3, eff. June 28, 1973.

2A:85-18. Objection by law enforcement agency; sealing of records; order; grounds; disposition of records and requests for information

a. If an objection is made by any law enforcement agency upon which notice was served, the court shall determine whether there are grounds for denial. If the court determines there are no grounds for denial it may grant an order directing the clerk of the court and the parties upon whom notice was served to seal their records of said arrest, including evidence of detention related thereto, and specifying those records to be sealed.

b. If an order sealing the records of arrest is granted by the court, any law enforcement officers and departments who receive requests for information or records on the person against whom the arrest was entered shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. Such sealed records and information may be maintained by any law enforcement agency originally possessing such records and information, but such information shall be utilized only within the department and sufficient precautions shall be taken to insure that the sealed records and information are not revealed to anyone outside the law enforcement agency which continues to maintain the records or information.

Inspection of the files and records, or release of the information in the files and records, which are the subject of the sealing order, to anyone other than a person within the law enforcement agency in which the arrest records were sealed, may be permitted only by the court upon motion for good cause shown, and any such motion and any order granted pursuant to such motion shall specify the person or persons to whom the records and information are to be shown.
L.1973, c. 191, § 4, eff. June 28, 1973.

2A:85–19. Denial of order to expunge or seal records

If the court determines there are grounds for denial, the court shall not grant an order to expunge or seal the records of the arrest or evidence of detention related thereto.
L.1973, c. 191, § 5, eff. June 28, 1973.

2A:85–20. Grounds for denial

For the purpose of this act "grounds for denial" shall exist:

a. When the usefulness of the information of the arrest and the proceedings to law enforcement authorities and to anyone who might obtain such information outweighs the desirability of having a person, who has been acquitted or against whom charges have been dismissed or discharged, freed from any disabilities attached to the arrest which preceded that acquittal, dismissal or discharge.

b. When dismissal resulted from a plea bargaining agreement or when acquittal, discharge or dismissal occurred after exclusion of highly probative evidence upon invocation of an exclusionary rule not directed to the truth of the evidence excluded.

L.1973, c. 191, § 6, eff. June 28, 1973.

Law Review Commentaries

Expungement and sealing of arrest and conviction records. (1974) 5 Seton Hall L.Rev. 864.

1. Construction and application

The issue of "grounds for denial" never arises unless an objection is made by one of the law enforcement agencies to which notice has been given in petition to expunge or seal record of arrest. State v. Davies, 129 N.J.Super. 1, 321 A.2d 286 (1974).

2A:85–21. Effect of order expunging or sealing record of arrest

If an order expunging or sealing a record of arrest is granted, the arrest and any proceedings related thereto shall be deemed not to have occurred and the petitioner may answer accordingly any question relating to their occurrence.
L.1973, c. 191, § 7, eff. June 28, 1973.

2A:85–22. Retroactive application; inapplicability of act to reports under Controlled Dangerous Substances Registry Act

This act shall apply to arrests which occurred prior to and which occur after enactment of this act. No court order pursuant to this act shall prohibit the filing of reports required under the "Controlled Dangerous Substances Registry Act of 1970," c. 227 (C. 26:2G–17 et seq.).
L.1973, c. 191, § 8, eff. June 28, 1973.

2A:85–23. Fees

For services performed under this act the same fees shall be taxed as are usual for like services in other matters, which fees shall be payable by the petitioner.
L.1973, c. 191, § 9, eff. June 28, 1973.

2A:151–35. Applications for permits and identification cards; contents; blanks; fingerprints

Applications for permits to purchase a pistol or revolver and for firearms purchaser identification cards shall be in the form prescribed by the superintendent and shall set forth the name, residence, place of business, age, date of birth, occupation, sex and physical description including distinguishing physical characteristics, if any, of the applicant, and shall state whether the applicant is a citizen, whether he is an alcoholic, habitual drunkard, addicted to narcotic drugs or is a habitual user of goofballs or pep pills, whether he has ever been confined or committed to a mental institution or hospital for treatment or observation of a mental or psychiatric condition on a temporary, interim or

permanent basis, giving the name and location of the institution or hospital and the dates of such confinement or commitment, whether he has been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or psychiatric condition giving the name and location of the doctor, psychiatrist, hospital or institution and the dates of such occurrence, whether he presently or ever has been a member of any organization, which advocates or approves the commission of acts of force and violence either to overthrow the Government of the United States or of this State, or which seeks to deny others their rights under the Constitutions of either the United States or the State of New Jersey, whether he has ever been convicted of a crime, or disorderly persons offense, and such other information as the superintendent shall deem necessary for the proper enforcement of this chapter. The application shall be signed by the applicant and shall contain as reference the names and addresses of 2 reputable citizens personally acquainted with him.

Application blanks shall be obtainable from the superintendent and from any other officer authorized to grant such permit or identification card, and may be obtained from licensed retail dealers.

The chief police officer or the superintendent shall obtain the fingerprints of the applicant and shall have them compared with any and all records of fingerprints in the municipality and county in which the applicant resides and also the records of the State Bureau of Identification and the Federal Bureau of Investigation, provided that an applicant for a pistol or revolver purchase permit who possesses a valid firearms purchaser identification card, or who has previously obtained a pistol or revolver purchase permit from the same licensing authority for which he was previously fingerprinted, and who provides other reasonably satisfactory proof of his identity, need not be fingerprinted again; however, the chief police officer or the superintendent shall proceed to investigate the application to determine whether or not the applicant has become subject to any of the disabilities set forth in this chapter.

Amended by L.1966, c. 60, § 28.

Historical Note

Source: R.S. 2:176-35. L.1927, c. 321, § 9, p. 746, am. by L.1930, c. 218, § 2, p. 992, suppl. to L. 1898, c. 235, p. 794.

2A:164-28. Criminal conviction; expunging from record after 10 years; hearing; order; service; order of expungement; removal of disabilities; exceptions; fees

In all cases wherein a criminal conviction has been entered against any person ~~whereon sentence was suspended, or a fine imposed of not more than $1,000.00~~, and no subsequent conviction has been entered against such person, it shall be lawful after the lapse of 10 years from the date of such conviction or 10 years after the date such person completed his term of imprisonment or was released from parole, whichever is later, for the person so convicted to present a duly verified petition to the court wherein such conviction was entered, setting forth all the facts in the matter and praying for the relief provided for in this section.

Upon reading and filing such petition such court may by order fix a time, not less than 10 nor more than 30 days thereafter, for the hearing of the matter, a copy of which order shall be served in the usual manner upon the prosecutor of the county wherein such court is located, and upon the chief of police or other executive head of the police department of the municipality wherein said offense was committed, and upon the Diagnostic Center at Menlo Park if such person was committed to that institution before sentencing, within 5 days from the date of such order, and at the time so appointed the court shall hear the matter and if no material objection is made and no reason appears to the contrary, an order may be granted directing the clerk of such court to expunge from the records all evidence of said conviction and that the person against whom such conviction was entered shall be forthwith thereafter relieved from such disabilities as may have heretofore existed by reason thereof, excepting convictions involving the following crimes: treason, misprision of treason, anarchy, all ~~capital cases,~~ homicides other than death by driving a vehicle under N.J.S. 2A:113-9, assault on a head of state, as defined in N.J.S. 2A:148-6, kidnapping, ~~perjury, carrying concealed weapons or weapons of any deadly nature or type,~~ rape, ~~seduction, aiding, assisting or concealing persons accused of high misdemeanors, or aiding the escape of inmates of prisons, embracery,~~ arson, ~~robbery or burglary~~ or robbery, and further excepting that the court may continue the hearing for 30 days and order an evaluation of such person by the Diagnostic Center if he was committed to such center before sentencing.

For services performed under this section same fees shall be taxed as are usual for like services in other matters, which fees shall be payable by the petitioner.

Amended by L.1975, c. 385, § 1, eff. March 3, 1976.

RULE 1:38. CONFIDENTIALITY OF COURT RECORDS

All records which are required by statute or rule to be made, maintained or kept on file by any court, office or official within the judicial branch of government shall be deemed a public record and shall be available for public inspection and copying, as provided by law, except:

(a) Personnel and pension records;

(b) County probation department records pertaining to investigations and reports made for a court or pertaining to persons on probation;

(c) Completed jury questionnaires, which shall be for the exclusive use and information of the jury commissioners and the Assignment Judge, and the preliminary lists of jurors prepared pursuant to N.J.S. 2A:70-1 and 2, which shall be confidential unless otherwise ordered by the Assignment Judge;

(d) Records required by statute or rule to be kept confidential or withheld from indiscriminate public inspection;

(e) Records in any matter which a court has ordered impounded or kept confidential.

Note: Source—R.R. 1:29-3 (second and third sentences), 1:35.

2A:169–11. Expunging record of conviction as disorderly person; fee

In all cases wherein a person has been adjudged a disorderly person whereon sentence was suspended or a fine imposed and no subsequent criminal or disorderly person conviction has been entered against such person, it shall be lawful after the lapse of 5 years from the date of such conviction for the person so adjudged a disorderly person to present a duly verified petition to the County Court of the county in which the conviction was entered, setting forth all the facts in the matter and praying for the relief provided for in this act.

Upon reading and filing such petition the court may by order fix a time, not less than 10 or more than 30 days thereafter, for the hearing of the matter, a copy of which order shall be served in the usual manner, within 5 days from its date, upon the county prosecutor and upon the chief of police or other executive head of the police department of the municipality wherein the offense was committed and, if the conviction was entered in a municipal court, upon the magistrate of that court. At the time so appointed the court shall hear the matter and if no material objection is made and no reason appears to the contrary, an order may be granted directing the clerk of the court wherein such conviction was entered to expunge from the records all evidence of said conviction and that the person against whom such conviction was entered shall be forthwith thereafter relieved from such disabilities as may have existed by reason thereof.

For services performed under this act the same fees shall be taxed as are usual for like services in other matters, which shall be payable by the petitioner.

L.1968, c. 279, § 1, eff. Sept. 4, 1968.

53:1–12. Bureau continued; superintendent to control; appointment of supervisor and other personnel; equipment; civil service rights; titles established

The State Bureau of Identification created by an act entitled "An act to create a State Bureau of Identification within the Department of State Police and requiring peace officers, persons in charge of certain State institutions and others to make reports respecting criminals to such bureau, and to provide a penalty for violation of the provisions thereof," approved April third, one thousand nine hundred and thirty (L.1930, c. 65, p. 279),[1] is continued. The State Bureau of Identification shall be within the Department of State Police [2] and under the supervision and control of the Superintendent of State Police. The superintendent shall appoint a supervisor of the State Bureau of Identification, with the rank and pay of a lieutenant in the State Police, and such other personnel, with the equivalent rank and pay of

their positions in the State Police, and such civilian personnel as he may deem necessary to carry out the provisions of this article.

The nucleus of such bureau shall be the fingerprints and photographs heretofore on file in the central bureau of identification in the Department of State Police which will be added to as provided by the provisions of this article.

The superintendent shall supply such bureau with the necessary apparatus and materials for collecting, filing, preserving and distributing criminal records.

For the purpose of establishing civil service rights for full-time civilian employees, there are hereby established in the State Bureau of Identification the following titles: Principal clerk, principal clerk-stenographer, senior clerk-stenographer, assistant photographer, senior fingerprint operators, fingerprint operators, senior identification clerk, identification clerks, chemist criminal laboratory.

The present civilian employees of the State Bureau of Identification shall be placed by the Civil Service Commission in the classified service and shall hold and retain their present title, pursuant to the provisions of Title 11, subtitle two, of the Revised Statutes. As amended L.1940, c. 103, p. 241, § 1.

[1] This section and §§ 53:1-13 to 53:1-20.

[2] Now Division of State Police in Department of Law and Public Safety. See §§ 52:17B-6, 52:17B-51.

Historical Note

Source. L.1930, c. 65, § 1, p. 279.

53:1-13. Fingerprints and other records filed; information furnished by state institutions

The supervisor of the state bureau of identification shall procure and file for record, fingerprints, plates, photographs, pictures, descriptions, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of an indictable offense within the state, and also of all well known and habitual criminals wheresoever the same may be procured.

The person in charge of any state institution shall furnish any such information to the supervisor of the state bureau of identification upon request of the superintendent of state police.

Historical Note

Source. L.1930, c. 65, § 2, p. 280.

53:1-14. Record of fingerprints, etc., of persons confined in penal institutions; penal institutions to furnish

The supervisor of the state bureau of identification may procure and file for record, fingerprints, photographs and other identification data of all persons confined in any workhouse, jail, reformatory, penitentiary or other penal institution and shall file for record such other information as he may receive from the law enforcement officers of the state and its subdivisions.

The wardens, jailers or keepers of workhouses, jails, reformatories, penitentiaries or other penal institutions shall furnish the state bureau of identification with fingerprints and photographs of all prisoners who are or may be confined in the respective institutions, and shall also furnish such other information respecting such prisoners as may be requested.

Historical Note

Sources. L.1930, c. 65, §§ 2, 3, p. 280.

53:1-15. Fingerprints; persons arrested; persons violating § 2A:170-8; unknown dead; forwarding to State Bureau

The sheriffs, chiefs of police, members of the State Police and any other law enforcement agencies and officers, shall immediately upon the arrest of any person for an indictable offense, or of any person believed to be wanted for an indictable offense, or believed to be an habitual criminal, and immediately after the conviction of any person of violations of the provisions of section 2A:170-8 of the New Jersey Statutes, take the fingerprints of such person according to the fingerprint system of identification established by the Superintendent of State Police and on the forms prescribed, and forward without delay two copies or more of the same, together with photographs and such other descriptions as may be required and with a history of the offense committed, to the State Bureau of Identification.

Such sheriffs, chiefs of police, members of the State Police and any other law enforcement agencies and officers shall also take the fingerprints, descriptions and such other information as may be required, of unknown dead persons and forward same to the State Bureau of Identification. As amended L.1952, c. 93, p. 427, § 1.

53:1-16. Comparison of all records received

The supervisor of the state bureau of identification shall compare all records received with those already on file in such bureau, and whether or not he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the requesting agency or arresting officer of such fact.

53:1-17. Supervisor to instruct, assist and co-operate with local police officials

The supervisor of the state bureau of identification shall co-operate with, afford instruction and offer assistance to sheriffs, chiefs of police and other law enforcement officers in the establishment and operation of their local systems of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on a complaint of an indictable offense, to assure co-ordination with the system of identification conducted by the state bureau. The superintendent of state police shall arrange for such co-operation, instruction and assistance by the supervisor.

53:1-18. Report of criminal charges or disorderly offenses; duty of clerks of courts

For the purpose of submitting to the Governor and the Legislature a report of statistics on crime conditions in the annual report of the ~~department~~ Division of State Police, the clerk of every court before which a ~~prisoner is arraigned~~ person appears on ~~an indictable offense~~ any criminal charge or disorderly persons offense shall ~~promptly~~ within 30 days report to the State Bureau of Identification the sentence of the court or other disposition of the case.

Amended by L.1967, c. 284, § 1, eff. Jan. 23, 1968.

Library references
Clerks of Courts ⇐67.
C.J.S. Clerks of Courts § 38.

53:1-18a. Report of statistics on crime conditions; duty of prosecutors

For the purpose of submitting to the Governor and the Legislature a report of statistics on crime conditions in the annual report of the Division of State Police, the prosecutor of every county shall within 30 days report to the State Bureau of Identification, on forms prescribed by the superintendent of State Police, such information as he shall require for the aforesaid purpose.

L.1967, c. 284, § 2, supplementing Title 53, Ch. 1, eff. Jan. 23, 1968.

Library references
States ⇐73.
C.J.S. States § 60 et seq.

53:1-18.1 Fingerprints of persons arrested for narcotic or dangerous drug offenses

Every law enforcement officer designated in section 53:1-15 of the Revised Statutes shall, immediately upon the arrest of any person for any offense against the laws of the United States, or any offense against the laws of this State, relating to narcotic or dangerous drugs, whether the same shall be indictable or otherwise, take the fingerprints of such person and forward copies thereof together with photographs and such other description and information as is required by such section in the case of the arrest of persons for any offense indictable under the laws of this State.

Amended by L.1967, c. 298, § 3, eff. Feb. 15, 1968.

53:1-18.2 Reports on narcotic or dangerous drug cases; duty of clerks of court

The clerk of every court of this State in which any person is prosecuted for an offense under the laws of this State relating to narcotic or dangerous drugs, whether the same be indictable or otherwise, shall promptly report to the State Bureau of Identification the sentence of the court or other disposition of the case.

Amended by L.1967, c. 298, § 4, eff. Feb. 15, 1968.

53:1-18.3 Compilation of results of reports on narcotic or dangerous drug cases; information for controlled dangerous substances registry

It shall be the duty of the Superintendent of the State Police:

a. To compile and report annually to the Governor and to the Legislature the results of the reports of the arrests of all persons and the disposition of all cases involving offenses relating to narcotic or dangerous drugs, substances or compounds within the preceding year and to furnish quarterly reports of a like nature during the interim periods.

b. To provide on a continuing basis to the Division of Narcotic and Drug Abuse Control of the State Department of Health such information as the director thereof shall require from time to time on forms prescribed by the State Department of Health for use in connection with the registry established by this act.

Amended by L.1967, c. 298, § 5, eff. Feb. 15, 1968; L.1970, c. 227, § 6, eff. Oct. 19, 1970.

53:1-20.2 Duty of law enforcement officers and public officers and employees to supply information; County Bureau of Identification defined

To the end that the county bureaus of identification in each of the counties of this State and the bureau of identification of the Department of the State Police [1] may have available the requisite information for the keeping of such records, it shall be the duty of sheriffs, members of the State Police, county detectives, chiefs of police and other law enforcement officers, immediately upon the receipt of a complaint that an indictable offense has been committed, to forward to the county bureau of identification and the bureau of identification of the State Police Department all of such information which can at that time be obtained, on forms to be provided for that purpose by the head of the office in which such county bureau of identification is established.

It shall also be the duty of such officers, from time to time, upon receipt of additional information, to forward the same to the county bureau of identification and to the bureau of identification of the State Police Department, on forms to be provided for that purpose by the head of the office in which such county bureau of identification is established.

It shall also be the duty of the prosecutor of the pleas, the county clerks, and the probation office in the various counties of this State to supply to the county bureau of identification and to the bureau of identification in the Department of State Police all information on record in their respective offices which may be necessary to complete the records in the prescribed form, as set forth in section one hereof.

The duties herein prescribed to be performed by the public officers and employees herein referred to shall be additional to the duties now prescribed by law to be performed by such public officers and employees.

The words "The County Bureau of Identification," as used in this act, shall be taken to mean the bureau of identification as now established in the office of the sheriff or in the office of the prosecutors of the pleas in the respective counties in this State. L.1939, c. 78, p. 131, § 2.

[1] Now Division of State Police in Department of Law and Public Safety. See §§ 52:17B-6, 52:17B-51.

53:1-20.3 *Release of prisoners from penal or other institutions; notice to bureau; photographs*

It shall be the duty of the wardens of the county jail in the various counties, of the wardens of the county penitentiaries and workhouses in the various counties of the State and of the Principal Keeper of the State Prison and of the wardens or superintendents of the other State institutions to which prisoners are or may be committed upon the release of any prisoner in their respective charges to notify the Bureau of Identification of the county from which that prisoner was committed and the Bureau of Identification of the State Police of the fact of such prisoner's release and the date of such release.

In the case of any such prisoner who was committed for a term of 5 years or more, it shall also be the duty of the Principal Keeper of the State Prison to forward to the Bureau of Identification of the county from which the prisoner was committed and to the Bureau of Identification of the State Police, at the time of giving the said notification, a photograph of the said prisoner taken within the 30-day period immediately preceding his release. As amended L.1956, c. 45, p. 93, § 1.

53:1-20.4 Department originally arresting prisoner to be notified of his release

It shall be the duty of the County Bureau of Identification in the several counties of the State immediately upon receipt of such information concerning the release of a prisoner to notify the head of the police department or other law enforcement department which made the original arrest of said prisoner that the said prisoner has been released and the date of his release. L. 1940, c. 65, § 2.

CORRECTIONAL INSTITUTIONS—NOTICE OF RELEASE TO LOCAL POLICE DEPARTMENTS

CHAPTER 189 [95]

ASSEMBLY NO. 595

An Act requiring superintendents of State correctional institutions and wardens or keepers of county penal institutions, or their designees, to notify local police departments of the proposed release of inmates in their municipalities.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1.

Any superintendent, or his designee, of a State correctional institution or warden or keeper, or his designee, of a county penal institution, from which an inmate is released on an interim basis pursuant to P.L.1969, c. 22 (C. 30:4-91.1 et seq.), or P.L.1968, c. 372 (C. 30:8-44 et seq.) shall notify the local police department of the intention of the inmate to visit, study, work or reside in the respective municipality.

2.

This act shall take effect immediately.

Approved and effective Aug. 24, 1977.

24:21-27. Conditional discharge for certain first offenses; expunging of records

a. Whenever any person who has not previously been convicted of any offense under the provisions of this act or, subsequent to the effective date of this act, under any law of the United States, this State or of any other state, relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, is charged with or convicted of any offense under subsections 20 a. (1), (2) and (3), and b., the court, upon notice to the prosecutor and subject to subsection c., may on motion of the defendant or the court:

(1) Suspend further proceedings and with the consent of such person after reference to the Controlled Dangerous Substance Registry, as established and defined in the Controlled Dangerous Substances Registry Act of 1970,[1] place him under supervisory treatment upon such reasonable terms and conditions as it may require; or

(2) After plea of guilt or finding of guilt, and without entering a judgment of conviction, and with the consent of such person after proper reference to the Controlled Dangerous Substances Registry as established and defined in the Controlled Dangerous Substances Registry Act of 1970, place him on supervisory treatment upon such reasonable terms and conditions as it may require, or as otherwise provided by law.

b. In no event shall the court require as a term or condition of supervisory treatment under this section, referral to any residential treatment facility for a period exceeding the maximum period of confinement prescribed by law for the offense for which the individual has been charged or convicted, nor shall any term of supervisory treatment imposed under this subsection exceed a period of 3 years. Upon violation of a term or condition of supervisory treatment the court may enter a judgment of conviction and proceed as otherwise provided, or where there has been no plea of guilt or finding of guilt, resume proceedings. Upon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court pursuant to the Controlled Dangerous Substances Registry Act. Termination of supervisory treatment and dismissal under this section may occur only once with respect to any person. Imposition of supervisory treatment under this section shall not be deemed a conviction for the purposes of determining whether a second or subsequent offense has occurred under section 29 of this act or any law of this State.

c. Proceedings under this section shall not be available to any defendant unless the court in its discretion concludes that:

(1) The defendant's continued presence in the community, or in a civil treatment center or program, will not pose a danger to the community; or

(2) That the terms and conditions of supervisory treatment will be adequate to protect the public and will benefit the defendant by serving to correct any dependence on or use of controlled substances which he may manifest.

L.1970, c. 226, § 27. Amended by L.1971, c. 3, § 11.

24:21–28. Expunging of records of young offenders placed on probation

After a period of not less than 6 months, which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this act, such person, who at the time of the offense was 21 years of age or younger, may apply to the court for an order to expunge from all official records, except from those records maintained under the Controlled Dangerous Substances Registry, as established and defined in the Controlled Dangerous Substances Registry Act of 1970,[1] all recordations of his arrest, trial and conviction pursuant to this section. If the court determines, after a hearing and after reference to the Controlled Dangerous Substances Registry, that such person during the period of such probation and during the period of time prior to his application to the court under this section has not been guilty of any serious or repeated violation of the conditions of such probation, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied prior to such arrest and trial. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or trial in response to any inquiry made of him for any purpose. L.1970, c. 226, § 28.

ARTICLE II. ENTRY INTO FORCE AND WITHDRAWAL

53:6-2. Force and effect

This compact shall enter into force when enacted into law by any 2 of the States of Delaware, Maryland, New Jersey, New York and Pennsylvania. Thereafter, this compact shall become effective as to any other of the aforementioned States upon its enactment thereof.
L.1969, c. 80, § 2.1, eff. June 11, 1969.

Library references
States ⇐6.
C.J.S. States § 10.

53:6-3 Withdrawal

Any party State may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal, and any records, files or information obtained by officers or employees of a withdrawing State shall continue to be kept, used and disposed of only in such manner as is consistent with this compact and any rules or regulations pursuant thereto.
L.1969, c. 80, § 2.2, eff. June 11, 1969.

ARTICLE III. THE CONFERENCE

Library references
Criminal Law ⇐1222, 1224.
States ⇐6.
C.J.S. Criminal Law § 2008 et seq.
C.J.S. States § 10.

53:6-4. Mid-Atlantic State Police Administrator's Conference

There is established the "Mid-Atlantic State Police Administrators' Conference," hereinafter called the "conference," to be composed of the administrative head of the State Police Department of each party State.
L.1969, c. 80, § 3.1, eff. June 11, 1969.

53:6-17. Powers

The conference shall have power to:

a. **Mid-Atlantic Criminal Intelligence Bureau.** Establish and operate a Mid-Atlantic Criminal Intelligence Bureau, hereinafter called "the bureau," in which shall be received, assembled and kept case histories, records, data, personal dossiers and other information concerning persons engaged or otherwise associated with organized crime.

b. **Identification.** Consider and recommend means of identifying leaders and emerging leaders of organized crime and their associates.

c. **Promote co-operation.** Promote co-operation in law enforcement and make recommendations to the party States and other appropriate law enforcement authorities for the improvement of such co-operation.

d. **Other powers.** Do all things which may be necessary and incidental to the exercise of the foregoing powers.
L.1969, c. 80, § 4.1, eff. June 11, 1969.

Library references
Criminal Law ⇐1222, 1224.
States ⇐6.
C.J.S. Criminal Law § 2008 et seq.
C.J.S. States § 10.

ARTICLE V. DISPOSITION OF RECORDS AND INFORMATION

53:6-18. Central criminal intelligence service

The bureau established and operated pursuant to Article IV of this compact is designated and recognized as the instrument for the performance of a central criminal intelligence service to the State Police Departments of the party States. The files, records, data and other information of the bureau and, when made pursuant to the by-laws of the conference, any copies thereof shall be available only to duly designated officers and employees of the State Police Departments of the party States acting within the scope of their official duty. In the possession of the aforesaid officers and employees, such records, data and other information shall be subject to use and disposition in the same manner and pursuant to the same laws, rules and regulations applicable to similar records, data and information of the officer's or employee's agency and the provision of this compact.
L.1969, c. 80, § 5.1, eff. June 11, 1969

APPENDIX D

STATE OF NEW JERSEY

EXECUTIVE DEPARTMENT

TRENTON

E X E C U T I V E O R D E R N O:

By The Governor

WHEREAS, the Constitutions of the State of New Jersey and the United States of America have declared safeguards for individual privacy and the protection of the public safety as set forth in Article IV; and

WHEREAS, criminal justice agencies in their daily operations relating to the protection of citizens and property request information to be collected on offenders; and

WHEREAS, an individual's privacy is directly affected by the collection, maintenance, use and dissemination of criminal history information; and

WHEREAS, the increasing use of computers and sophisticated communications and technology magnify the potential risks associated with the protection of individual rights or privacy; and

WHEREAS, an individual's opportunities to secure employment, insurance, credit, his right to due process and other legal protections are affected by criminal record information systems, both automated and non-automated; and

WHEREAS, in order to preserve the rights of individual citizens and with due regard for the public safety in a free society, action is necessary to establish and insure procedures to govern information systems, including those containing criminal history records on individuals; and

WHEREAS, the United States Department of Justice, under the authority of the Attorney General and the Law Enforcement Assistance Administration, issued regulations governing access to and dissemination of criminal history record information and require a State Plan to implement such regulations; and

WHEREAS, a variety of acts by the State are necessary and proper to realize the objectives of the foregoing federal regulation and other relevant policies promulgated by the Law Enforcement Assistance Administration; and

WHEREAS, the State Law Enforcement Planning Agency, created by Executive Order No. 45 on the thirteenth day of August, 1968, has been designated as the State Planning Agency for the State of New Jersey; and

WHEREAS, it is the policy of the executive branch of government to encourage, by positive measures, maximum administrative support and management of the procedures outlined in the required plan and approved by the Governor; and

In further commitment on behalf of the Governor to the principal of strengthening the criminal justice information system in New Jersey and to insure the citizens' right to privacy.

NOW, THEREFORE, I, BRENDAN T. BYRNE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and Statutes of New Jersey, do hereby issue, the following Executive Order:

There is hereby created, within the Office of the Governor, and reporting directly to the Governor, the Criminal Justice Privacy and Security Council (Council).

The Council is hereby designated as the entity within State government responsible for reviewing requests for access to criminal history information by non-criminal justice agencies or individuals, reviewing preliminary appeals related to individual challenges to criminal history records of said individuals, and

conducting initial reviews for access to sealed criminal history records, except such records sealed by the Court. The composition will be determined by the Governor upon the recommendation of the Attorney General.

All Council members who are appointed by the Governor because of the position they occupy with a state agency or local unit of government, shall be members of this Council so long as they hold that office. Private citizens, if any, shall be appointed by the following terms (1 member) one year; (two members) two years and (two members) three years.

The Council shall conduct regular monthly meetings, and any other sessions at the discretion of the Chairman. Records shall be kept of all meetings.

The Council shall be directed by an Executive Director who shall be an Ex-officio member and Chairman of the Council. The Executive Director shall be directly responsible to, and appointed by, the Governor. The Executive Director is hereby empowered to take all necessary and proper actions to implement all provisions of the aforesaid state plan and federal regulations upon approval by the Governor. The Executive Director is hereby designated as the appointing authority for civil service commission purposes.

The Executive Director and the Civil Service Commission shall take the necessary actions to place all positions of the Agency under Civil Service coverage, effective July 1, 1976, with the following exceptions: (1) part-time professional personnel, (2) student interns, and (3) janitors.

All members of the Council shall be citizens of the State and be appointed by the Governor. Members of the Council shall serve at the will and the pleasure of the Governor. All members shall serve without pay, but may be reimbursed for actual and necessary travel expenses for travel to and from Council meetings and when performing other functions in furthering the work of the Council, said expenditures to be in line with the travel rules and regulations adopted by this State.

4-25-2. **Definitions.**—As used in the Automated Data Processing Act [4-25-1 to 4-25-8]:

A. "agency" means department, board, bureau, commission or political subdivision of the state;

B. "division" means division of automated data processing;

C. "automated data processing" means a method of handling data to obtain a desired result, through utilization of computers, electronic tabulating equipment or similar devices;

D. "automated data processing center" means any computer or tabulating equipment installation performing automated data processing services for more than one [1] agency; and

E. "law enforcement agency" means every department, board, bureau, commission, institution or political subdivision of the state and every Indian or tribal law enforcement agency responsible for the prevention, detection or enforcement of any penal, traffic or highway laws of this state or for the keeping of any records relating to any penal, traffic or highway laws of this state.

4-25-7. **Purpose and powers of division.**—The purpose of the division is to perform automated data processing services for agencies when so specified in a legislative act or when contracted for with an agency or the federal government, to co-ordinate the state's automated data processing program, and to assist in effecting economical and efficient use of state automated data processing equipment and personnel and, to that end, shall:

A. assist in establishing automated data processing procedures and facilities;

B. formulate a current and long-range automated data processing plan through studies of the needs of state agencies for automated data processing services and recommend priorities for the implementation of programs;

C. administer state automated data processing centers if authorized to do so by legislative act or by contract with agencies involved;

D. advise the state personnel board on qualifications and wage standards for automated data processing personnel;

E. recommend the facilities in which specific automated data processing services will be performed;

F. recommend standards governing the choice of state automated data processing equipment;

G. prescribe standards governing automated data processing systems work, programming methods and the form of input data where data is processed by the division;

H. advise the governor and legislature on automated data processing matters;

I. perform such other acts as may be required for the effective performance of the division's duties; and

J. shall provide adequate security safeguards to ensure that the data it processes and the records it creates are available only to those persons authorized in accordance with the Public Records Act [71-6-1 to 7-6-16, 71-6-17.1] or pursuant to regulations promulgated by the commission of public records.

4-25-8. Central information system—Criminal justice and highway safety.—A. The division shall:

(1) be the exclusive agency responsible for the programming, operation and maintenance of any computer-based central information system that is funded from any source whatsoever and that responds to the needs of law enforcement agencies, the courts and correction agencies of the state and its political subdivisions in the areas of criminal justice and highway safety; and

(2) prescribe the format, but not the content, of data and records to be maintained in any central computer file developed under paragraph (1) of this subsection.

B. No employee of the division, nor any person working under a contract with the division, shall disclose any information in records maintained by the division under this section to any person other than specifically authorized employees of the agency originating the information or persons authorized access to the information by the originating agency, but this restriction does not prohibit employees of the division, or any person working under a contract with the division, access to and use of information in records maintained by the division for purposes directly related to their work functions and responsibilities under this section.

C. Any person violating the prohibition of subsection B of this section is guilty of a misdemeanor and shall be punished by imprisonment for a definite term of less than one [1] year or the imposition of a fine of not more than one thousand dollars ($1,000), or both.

39-3-1. Systems to be installed and maintained—Duty of state police—Persons concerning whom information is to be kept—Record and index.—It shall be the duty of [the superintendent and] the bureau of criminal identification to install and maintain [a] complete systems for the identification of criminals, including the fingerprint system and the modus operandi system. The bureau shall obtain from whatever source procurable, and shall file and preserve for record, such plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements and such other information about, concerning and relating to any and all persons who have been or who shall hereafter be convicted of a felony or who shall attempt to commit a felony within this state, or who are well-known and habitual criminals, or who have been convicted of any of the following felonies or misdemeanors: illegally carrying, concealing or possessing a pistol or any other dangerous weapon; buying or receiving stolen property; unlawful entry of a building; escaping or aiding an escape from prison; making or possessing a fraudulent or forged check or draft; petit larceny [;] and unlawfully possessing or distributing habit-forming narcotic drugs.

The bureau may also obtain like information concerning persons who have been convicted of violating any of the military, naval or criminal laws of the United States, or who have been convicted of a crime in any other state, county [country], district or province, which, if committed within this state, would be a felony.

The bureau shall make a complete and systematic record and index all information obtained for the purpose of providing a convenient and expeditious method of consultation and comparison.

39-3-2. Co-operation with local peace officers—Assistance to prosecuting attorneys—Reimbursement for expenses.—The bureau shall co-operate with the respective sheriffs, constables, marshals, police and other peace officers of this state in the detection of crime and the apprehension of criminals throughout the state and shall on the direction of the governor or attorney general, conduct such investigations as may be deemed necessary to obtain and secure evidence which may be considered necessary or essential for the conviction of alleged violators of the criminal laws of this state, and the superintendent or his assistant is hereby authorized to assist any prosecuting attorney in the prosecution of any criminal case which may in his judgment require such co-operation. All expenses such as travel, meals and lodging involved in such assistance shall be paid from the court fund of the county in which the trial is held or to be held.

39-3-3. Co-operation with federal agencies and agencies of other states—Furnishing information.—It shall be the duty of the bureau and it is hereby granted the power to co-operate with agencies of other states and of the United States, having similar powers, to develop and carry on a complete interstate, national and international system of criminal identification and investigation, and also to furnish upon request, any information in its possession concerning any person charged with crime to any court, district attorney or police officer or any peace officer of this state, or of any other state, or the United States.

39-3-8. Fingerprints taken of persons arrested for felonies—Duplicate sets—Disposition.—All sheriffs, police, marshals, and other peace officers shall, upon taking into custody any person charged with the commission of felony under the laws of this state or of any other states, counties [countries] or provinces, require said accused to make fingerprint impressions in accordance with rules therefor, to be formulated under the direction of the superintendent. Said record of imprints shall be made in duplicate, and one [1] copy thereof shall be by such officer immediately transmitted to the superintendent of the bureau of criminal identification in Santa Fe, and one [1] copy thereof shall be immediately transmitted to the Bureau of Fingerprints, of the Department of Justice, at Washington, D. C.

39-3-9. Attending federal school of instruction—Compensation and allowances.—The governor may, when by him deemed necessary or advisable, detail and commission any member or members [of the bureau or] of the New Mexico state police or any other person or persons to attend as a student, any school of instruction, now, or which may hereafter be established and operated by the United States or any of its agencies, having for its purpose the instruction and training of operators in crime detection and identification, investigation and apprehension of criminals. Such person or persons so detailed and commissioned shall, when they are members of the New Mexico state police, [or employees of the bureau,] draw the same salaries and allowances as when on duty in this state and shall be deemed to be on leave of absence for such purpose. All other persons so detailed and commissioned for such purpose shall be paid such compensation and allowance as may be provided by law.

ARTICLE 24—CRIMINAL OFFENDER EMPLOYMENT ACT

Section
41-24-1. Short title.
41-24-2. Purpose of act.
41-24-3. Employment eligibility determination.
41-24-4. Power to refuse, renew, suspend or revoke public employment or license.
41-24-5. Nonapplicability to law enforcement agencies.
41-24-6. Applicability.

41-24-1. Short title.—Sections 1 through 6 of this act [41-24-1 to 41-24-6] may be cited as the "Criminal Offender Employment Act."

41-24-2. Purpose of act.—The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible.

History: Laws 1974, ch. 78, § 2.

41-24-3. Employment eligibility determination.—A. Subject to the provisions of subsection B of this section and sections 4 and 5 of the Criminal Offender Employment Act [41-24-4 and 41-24-5], in determining eligibility for employment with the state or any of its political subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession, the board or other department or agency having jurisdiction may take into consideration the conviction, but such conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession.

B. The following criminal records shall not be used, distributed or disseminated in connection with an application for any public employment, license or other authority:

(1) records of arrest not followed by a valid conviction; and

(2) misdemeanor convictions not involving moral turpitude.

History: Laws 1974, ch. 78, § 3.

Compiler's Notes.

The compiler substituted "sections 4 and 5" for "sections 3 and 4" and inserted the bracketed reference to "41-24-4 and 41-24-5" in subsection A.

Cross-References.

Persons convicted of felonious or infamous crime ineligible for public office unless pardoned or restored to political rights, 5-1-2.

41-24-4. Power to refuse, renew, suspend or revoke public employment or license.—A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew, or may suspend or revoke, any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:

(1) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment, trade, business or profession; or

(2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business or profession, if the board or other agency determines, after

investigation, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.

B. The board or other agency shall explicitly state in writing the reasons for a decision which prohibits the person from engaging in the employment, trade, business or profession, if the decision is based in whole or part on conviction of any crime described in paragraph (1) of subsection A of this section. Completion of probation or parole supervision, or of a period of three [3] years after final discharge or release from any term of imprisonment without any subsequent conviction, shall create a presumption of sufficient rehabilitation for purposes of paragraph (2) of subsection A of this section.

History: Laws 1974, ch. 78, § 4.

41-24-5. Nonapplicability to law enforcement agencies.—The Criminal Offender Employment Act [41-24-1 to 41-24-6] is not applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

History: Laws 1974, ch. 78, § 5.

41-24-6. Applicability.—The provisions of the Criminal Offender Employment Act [41-24-1 to 41-24-6] relating to any board or other agency which has jurisdiction over the practice of any trade, business or profession apply to authorities made subject to its coverage by law, or by any such authorities' rules or regulations if permitted by law.

71-5-1. Right to inspect public records—Exceptions.—Every citizen of this state has a right to inspect any public records of this state except:

A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions;

B. letters of reference concerning employment, licensing or permits;

C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files; and

D. as otherwise provided by law.

71-5-2. Officers to provide opportunity and facilities for inspection.—All officers having the custody of any state, county, school, city or town records in this state shall furnish proper and reasonable opportunities for the inspection and examination of all the records requested of their respective offices and reasonable facilities for making memoranda abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them for any lawful purpose.

71-5-3. Penalties for violation of act.—If any officer having the custody of any state, county, school, city or town records in this state shall refuse to any citizen of this state the right to inspect any public records of this state, as provided in this act [71-5-1 to 71-5-3], such officer shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than two hundred and fifty dollars ($250.00) nor more than five hundred dollars ($500.00), or be sentenced to not less than sixty (60) days nor more than six (6) months in jail, or both such fine and imprisonment for each separate violation.

71-6-2. Definitions.—As used in the Public Records Act [71-6-1 to 71-6-16, 71-6-17.1]:

A. "Commission" means the state commission of public records;

B. "Administrator" means the state records administrator;

C. "Public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. Library or museum material of the state library, state institutions and state museums, extra copies of documents preserved only for convenience of reference, and stocks of publications and processed documents are not included;

D. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico; and

E. "Records center" means the central records depository which is the principal state facility for the storage, disposal, allocation or use of noncurrent records of agencies, or materials obtained from other sources.

71-6-7. Inspection and survey of public records.—The administrator is authorized to inspect or survey the records of any agency, and to make surveys of records management and records disposal practices in the various agencies, and he shall be given the full co-operation of officials and employees of the agencies in such inspections and surveys. Records, the use of which is restricted by or pursuant to law or for reasons of security or the public interest, may be inspected or surveyed by the administrator, subject to the same restrictions imposed upon employees of the agency holding the records.

History: Laws 1959, ch. 245, § 7.

71-6-8. Records center.—A records center is established in Santa Fe under the supervision and control of the administrator. The center, in accordance with the regulations established by the administrator and the commission, shall be the facility for the receipt, storage or disposition of all inactive and infrequently used records of present or former state agencies or former territorial agencies which at or after the effective date of this act [71-6-1 to 71-6-17] may be in custody of any state agency or instrumentality, and which are not required by law to be kept elsewhere, or which are not ordered destroyed by the commission.

Records required to be confidential by law and which are stored in the center shall be available promptly when called for by the originating agency, but shall not be made available for public inspection except as provided by law. All other records retained by the center shall be open to the inspection of the general public, subject to reasonable rules and regulations prescribed by the administrator. Facilities for the use of these records in research by the public shall be provided in the center.

CRIMINAL PROCEDURE LAW

ARTICLE 160—FINGERPRINTING AND PHOTOGRAPHING OF DEFENDANT AFTER ARREST—CRIMINAL IDENTIFICATION RECORDS AND STATISTICS

Sec.

§ 160.10 Fingerprinting; duties of police with respect thereto

1. Following an arrest, or following the arraignment upon a local criminal court accusatory instrument of a defendant whose court attendance has been secured by a summons or an appearance ticket under circumstances described in sections 130.60 and 150.70, the arresting or other appropriate police officer or agency must take or cause to be taken fingerprints of the arrested person or defendant if an offense which is the subject of the arrest or which is charged in the accusatory instrument filed is:

(a) A felony; or

(b) A misdemeanor defined in the penal law; or

(c) A misdemeanor defined outside the penal law which would constitute a felony if such person had a previous judgment of conviction for a crime; or

(d) Loitering, as defined in subdivision three of section 240.35 of the penal law; or

(e) Loitering for the purpose of engaging in a prostitution offense as defined in subdivision two of section 240.37 of the penal law.

2. In addition, a police officer who makes an arrest for any offense, either with or without a warrant, may take or cause to be taken the fingerprints of the arrested person if such police officer:

(a) Is unable to ascertain such person's identity; or

(b) Reasonably suspects that the identification given by such person is not accurate; or

(c) Reasonably suspects that such person is being sought by law enforcement officials for the commission of some other offense.

3. Whenever fingerprints are required to be taken pursuant to subdivision one or permitted to be taken pursuant to subdivision two, the photograph and palmprints of the arrested person or the defendant, as the case may be, may also be taken.

4. The taking of fingerprints as prescribed in this section and the submission of available information concerning the arrested person or the defendant and the facts and circumstances of the crime charged must be in accordance with the standards established by the commissioner of the division of criminal justice services.

As amended L.1972, c. 399, § 17; L.1976, c. 344, § 3.

1976 Amendment. Subd. 1, L.1976, c. 344, § 3, eff. on the 30th day after June 11, 1976, inserted "or" in par. (d), and added par. (e).

1972 Amendment. Subd. 4, L.1972, c. 399, § 17, eff. Sept. 1, 1972, substituted "commissioner of the division of criminal justice services" for "director of the New York state identification and intelligence system."

Provisions Supplementary to L.1972, c. 399. See note under Executive Law § 820.

§ 160.20 Fingerprinting; forwarding of fingerprints

Upon the taking of fingerprints of an arrested person or defendant as described in section 160.10, the appropriate police officer or agency must without unnecessary delay forward two copies of such fingerprints to the division of criminal justice services.

As amended L.1972, c. 399, § 18; L.1973, c. 108, § 1.

1973 Amendment. L.1973, c. 108, § 1, eff. Mar. 27, 1973, increased the number of copies to be sent to the division of criminal justice services from one to two and deleted provisions requiring one copy to be sent to the federal bureau of investigation.

1972 Amendment. L.1972, c. 399, § 18, eff. Sept. 1, 1972, substituted "division of criminal justice services" for "New York state identification and intelligence system."

Provisions Supplementary to L. 1972, c. 399. See note under Executive Law § 820.

§ 160.30 Fingerprinting; duties of division of criminal justice services

1. Upon receiving fingerprints from a police officer or agency, pursuant to section 160.20, the division of criminal justice services must, except as provided in subdivision two, classify them, search its records for information concerning a previous record of the defendant, and promptly transmit to such forwarding police officer or agency a report containing all information on file with respect to such defendant's previous record, if any, or stating that the defendant has no previous record according to its files. Such a report, if certified, constitutes presumptive evidence of the facts so certified.

2. If the fingerprints so received are not sufficiently legible to permit accurate and complete classification, they must be returned to the forwarding police officer or agency with an explanation of the defects and a request that the defendant's fingerprints be retaken if possible.

As amended L.1972, c. 399, § 19.

1972 Amendment. Catchline. L. 1972, c. 399, § 19, eff. Sept. 1, 1972, substituted "division of criminal justice services" for "New York state identification and intelligence system."

Subd. 1. L.1972, c. 399, § 19, eff. Sept. 1, 1972, substituted "division of criminal justice services" for "New York state identification and intelligence system."

Provisions Supplementary to L. 1972, c. 399. See note under Executive Law § 820.

§ 160.40. Fingerprinting; transmission of report received by police

1. Upon receipt of a report of the division of criminal justice services as provided in section 160.30, the recipient police officer or agency must promptly transmit such report or a copy thereof to the district attorney of the county and two copies thereof to the court in which the action is pending.

2. Upon receipt of such report the court shall furnish a copy thereof to counsel for the defendant or, if the defendant is not represented by counsel, to the defendant.

As amended L.1972, c. 399, § 20; L.1975, c. 531, § 1.

1975 Amendment. L.1975, c. 531, § 1, eff. 30 days after July 29, 1975, deleted "to district attorney" in catchline, designated existing provisions as subd. 1, provided therein for 2 copies to be transmitted to the court in which the action is pending, and added subd. 2.

1972 Amendment. L.1972, c. 399, § 20, eff. Sept. 1, 1972, substituted "division of criminal justice services" for "New York state identification and intelligence system."

Provisions Supplementary to L. 1972, c. 399. See note under Executive Law § 820.

§ 160.50 Order upon termination of criminal action in favor of the accused

1. Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of this section, unless another criminal action or proceeding is pending against such person, or unless the district attorney upon motion with not less than five days notice to such person or his attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, the court wherein such criminal action or proceeding was terminated shall enter an order, which shall immediately be served by the clerk of the court upon the commissioner of the division of crim-

inal justice services and upon the heads of all police departments and other law enforcement agencies having copies thereof, directing that:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, and all duplicates and copies thereof, shall forthwith be returned to such person, or to the attorney who represented him at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprint or fingerprints in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints and fingerprints shall forthwith formally request in writing that all such copies be returned to the police department or law enforcement agency which transmitted or forwarded them, and upon such return such department or agency shall return them as provided herein;

(c) all official records and papers other than court decisions relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office be sealed and not made available to any person or public or private agency; and

(d) such records shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license.

2. For the purposes of subdivision one of this section, a criminal action or proceeding against a person shall be considered terminated in favor of such person where:

(a) an order dismissing the accusatory instrument pursuant to article four hundred seventy was entered; or

(b) an order to dismiss the accusatory instrument pursuant to section 170.30, 170.50, 170.55, 170.56, 210.20, or 210.46 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(c) a verdict of complete acquittal was made pursuant to section 330.10 of this chapter; or

(d) a trial order of dismissal pursuant to section 290.10 or 360.40 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people; or

(e) an order setting aside a verdict pursuant to section 330.30 or 370.10 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people and no new trial has been ordered; or

(f) an order vacating a judgment pursuant to section 440.10 of this chapter was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people, and no new trial has been ordered; or

(g) an order of discharge pursuant to article seventy of the civil practice law and rules was entered and the people have not appealed from such order or the determination of an appeal or appeals by the people from such order has been against the people.

3. A person in whose favor a criminal action or proceeding was terminated, as defined in subdivision two of this section, prior to the effective date of this section, may upon motion apply to the court in which such termination occurred, upon not less than twenty days notice to the district attorney, for an order granting to such person the relief set forth in subdivision one of this section, and such order shall be granted unless another criminal action or proceeding is pending against him, or unless the district attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise.

Added L.1976, c. 877, § 1.

Derivation. Section derived from Civil Rights Law § 79-e, added L. 1965, c. 1031, § 31; amended L.1971, c. 257, § 1; L.1971, c. 1097, § 10.

Effective Date. Section effective Sept. 1, 1976 pursuant to L.1976, c. 877, § 5.

§ 160.60 Effect of termination of criminal actions in favor of the accused

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this chapter, the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest and prosecution. The arrest or prosecution shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling. Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest or prosecution.

Added L.1976, c. 877, § 2.

Effective Date. Section effective Sept. 1, 1976 pursuant to L.1976, c. 877, § 5.

§ 170.56 Adjournment in contemplation of dismissal in cases involving marihuana

1. Upon or after arraignment in a local criminal court upon an information, a prosecutor's information or a misdemeanor complaint, where the sole remaining count or counts charge a violation or violations of section 220.03 of the penal law and the sole controlled substance involved is marihuana or section 240.36 of the penal law and the sole controlled substance involved is marihuana and before the entry of a plea of guilty thereto or commencement of a trial thereof, the court, upon motion of a defendant, may order that all proceedings be suspended and the action adjourned in contemplation of dismissal, or upon a finding that adjournment would not be necessary or appropriate and the setting forth in the record of the reasons for such findings, may dismiss in furtherance of justice the accusatory instrument; provided, however, that the court may not order such adjournment in contemplation of dismissal or dismiss the accusatory instrument if: (a) the defendant has previously been granted such adjournment in contemplation of dismissal, or (b) the defendant has previously been granted a dismissal under this section, or (c) the defendant has previously been convicted of any offense involving controlled substances, or (d) the defendant has previously been convicted of a crime and the district attorney does not consent or (e) the defendant has previously been adjudicated a youthful offender on the basis of any act or acts involving controlled substances and the district attorney does not consent.

2. Upon ordering the action adjourned in contemplation of dismissal, the court must set and specify such conditions for the adjournment as may be appropriate, and such conditions may include placing the defendant under the supervision of any public or private agency. At any time prior to dismissal the court may modify the conditions or extend or reduce the term of the adjournment, except that the total period of adjournment shall not exceed twelve months. Upon violation of any condition fixed by the court, the court may revoke its order and restore the case to the calendar and the prosecution thereupon must proceed. If the case is not so restored to the calendar during the period fixed by the court, the accusatory instrument is, at the expiration of such period, deemed to have been dismissed in the furtherance of justice.

3. Upon or after dismissal of such charges against a defendant not previously convicted of a crime, the court shall order that all official records and papers, relating to the defendant's arrest and prosecution, whether on file with the court, a police agency, or the New York state identification and intelligence system, be sealed and not made available to any person or public or private agency; except, such records shall be made available under order of a court for the purpose of determining whether, in subsequent proceedings, such person qualifies under this section for a dismissal or adjournment in contemplation of dismissal of the accusatory instrument.

4. Upon the granting of an order pursuant to subdivision three, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he occupied before his arrest and prosecution.

As amended L.1973, c. 276, § 22.

1973 Amendment. Subd. 1. L.1973, c. 276, § 22, eff. Sept. 1, 1973, substituted "220.03" for "220.05" and references to controlled substances for references to dangerous drugs.

Offenses Prior to Sept. 1, 1973. See section 33 of L.1973, c. 276, eff. Sept. 1, 1973, set out as a note under Penal Law § 220.00.

CORRECTION LAW

§ 211. Pre-parole records

As each inmate under an indeterminate or a reformatory sentence is received in an institution under the jurisdiction of the state department of correction, it shall be the duty of the parole board while the case is still fresh to cause to be obtained and filed information as complete as may be obtainable at that time with regard to each such inmate. Such information shall include a complete statement of the crime for which he is then sentenced, the circumstances of such crime, all pre-sentence memoranda, the nature of his sentence, the court in which he was sentenced, the name of the judge and district attorney and copies of such probation reports, as may have been made as well as reports as to the inmate's social, physical, mental and psychiatric condition and history. It shall be the duty of the clerk of the court, the commissioner of mental hygiene and all probation officers and other appropriate officials to send such information as may be in their possession or under their control to the board of parole upon request. The board of parole shall also at that time obtain and file a copy of the complete criminal record of such inmate and any family court record that may exist. When all such existing available records have been assembled, they shall be presented to the board of parole or to some officer designated by it, who shall determine whether any further investigation of such inmate is necessary at that time, and, if so, the nature of such investigation, and shall thereupon order it to be made. Such investigations shall be made while the case is still recent, and the results of them with all other information shall be filed in the office of the division so as to be readily available when the parole of such inmate is being considered.

As amended L.1970, c. 476, § 41; L.1975, c. 583, § 1.

1975 Amendment. L.1975, c. 583, § 1, eff. Sept. 1, 1975, in sentence beginning "Such information shall" inserted "all pre-sentence memoranda."

1970 Amendment. L.1970, c. 476, § 41, eff. on 60th day after May 8, 1970, substituted "each inmate under" for "each prisoner sentenced under", "an institution under the jurisdiction of the state department of correction" for "the state institutions named in section two hundred and ten of this article", "inmate" for "prisoner" in four instances and "inmate's social" for "prisoner's social", and inserted "or a reformatory" preceding "sentence."

§ 221. Records

The commissioner of correctional services shall cause complete records to be kept of every person released on parole or conditional release. Such records shall contain the aliases and photograph of each such person, and the other information referred to in this act, as well as all reports of parole officers with relation to such person. Such records shall be filed in the central office of the department and shall be organized in accordance with the most modern methods of filing and indexing so that there will always be immediately available complete information about each such person. The commissioner of correctional services shall make rules as to the privacy of such records, information contained therein and information obtained in an official capacity by officers, employees or members of the department or the board of parole.

As amended L.1971, c. 595, eff. June 22, 1971.

EXECUTIVE LAW § 835

ARTICLE 35—DIVISION OF CRIMINAL JUSTICE SERVICES [NEW]

§ 835. Definitions

1. "Division" means the division of criminal justice services.

2. "Board" means the crime control planning board.

3. "Commissioner" means the commissioner of the division of criminal justice services.

4. "Council" means the municipal police training council.

5. "Federal acts" means the federal omnibus crime control and safe streets act of nineteen hundred sixty-eight,[1] the federal juvenile delinquency prevention and control act of nineteen hundred sixty-eight,[2] and any act or acts amendatory or supplemental thereto.

6. "Municipality" means any county, city, town, park commission, village, or police district in the state.

7. "Police officer" means a member of a police force or other organization of a municipality who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state, but shall not include any person serving as such solely by virtue of his occupying any other office or position, nor shall such term include a sheriff, under-sheriff, commissioner of police, deputy or assistant commissioner of police, chief of police, deputy or assistant chief of police or any person having an equivalent title who is appointed or employed by a municipality to exercise equivalent supervisory authority.

8. "Police agency" means any agency or department of any municipality, commission, authority or other public benefit corporation having responsibility for enforcing the criminal laws of the state.

9. "Qualified agencies" means courts in the unified court system, the administrative board of the judicial conference, probation departments, sheriffs' offices, district attorneys' offices, the state department of correctional services, the state division of probation, the department of correction of any municipality, and police forces and departments having responsibility for enforcement of the general criminal laws of the state.

10. "Criminal justice function" means the prevention, detection and investigation of the commission of an offense, the apprehension of a person for the alleged commission of an offense, the detention, release on recognizance or bail of a person charged with an offense prior to disposition of the charge, the prosecution and defense of a person charged with an offense, the detention, release on recognizance or bail of a person convicted of an offense prior to sentencing, the sentencing of offenders, probation, incarceration, parole, and proceedings in a court subsequent to a judgment of conviction relating thereto.

Formerly § 820, added L.1972, c. 399, § 1; renumbered 835, and amended L.1973, c. 603, §§ 13, 14; L.1975, c. 839, § 1.

[1] 42 U.S.C.A. § 3701 et seq.
[2] 42 U.S.C.A. § 3801 et seq.

§ 836. Division of criminal justice services; commissioner, organization and employees

1. There shall be in the executive department a division of criminal justice services.

2. The head of the division shall be a commissioner who shall be appointed by the governor, by and with the advice and consent of the senate, and hold office at the pleasure of the governor by whom he was appointed and until his successor is appointed and qualified. The commissioner shall be the chief executive officer of and in sole charge of the administration of the division. The commissioner shall receive an annual salary to be fixed by the governor within the amount available therefor by appropriation; and he shall be entitled to receive reimbursement for expenses actually and necessarily incurred by him in the performance of his duties.

3. The commissioner may, from time to time, create, abolish, transfer and consolidate bureaus and other units within the division not expressly established by law as he may determine necessary for the efficient operation of the division, subject to the approval of the director of the budget.

4. The commissioner may appoint such deputies, directors, assistants and other officers and employees, committees and consultants as he may deem necessary, prescribe their powers and duties, fix their compensation and provide for reimbursement of their expenses within the amounts appropriated therefor.

5. The commissioner may request and receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority such assistance, information and data as will enable the division properly to carry out its functions, powers and duties.

6. The principal office of the division shall be in the county of Albany.

Formerly § 822, added L.1972, c. 399, § 1; renumbered 836, L.1973, c. 603, § 13.

Former Section 836. Renumbered 844.

Effective Date. Section 25 of L. 1972, c. 399, provided that this section is effective Sept. 1, 1972.

§ 837. Functions, powers and duties of division

The division shall have the following functions, powers and duties:

1. Advise and assist the governor in developing policies, plans and programs for improving the coordination, administration and effectiveness of the criminal justice system;

2. Make recommendations to agencies in the criminal justice system for improving their administration and effectiveness;

3. Act as the official state planning agency pursuant to the federal acts; in accordance therewith, prepare, evaluate and revise statewide crime control and juvenile delinquency prevention and control plans; receive and disburse funds from the federal government, for and on behalf of the board; and perform all necessary and appropriate staff services required by the board.

4. In cooperation with the state administrator of the unified court system as well as any other public or private agency,

(a) through the central data facility collect, analyze, evaluate and disseminate statistical and other information and data; and

(b) undertake research, studies and analyses and act as a central repository, clearinghouse and disseminator of research studies, in respect to criminal justice functions and any agency responsible for a criminal justice function, with specific attention to the effectiveness of existing programs and procedures for the efficient and just processing and disposition of criminal cases; and

(c) collect and analyze statistical and other information and data with respect to the number of crimes reported or known to peace officers, the number of persons arrested for the commission of offense, the offense for which the person was arrested, the county within which the arrest was made and the accusatory instrument filed, the disposition of the accusatory instrument including, but not limited to, as the case may be, dismissal, acquittal, the offense to which the defendant pled guilty, the offense the defendant was convicted of after trial, and the sentence.

(d) Supply data, upon request, to federal bureaus or departments engaged in collecting national criminal statistics.

5. Conduct studies and analyses of the administration or operations of any criminal justice agency when requested by the head of such agency, and make the results thereof available for the benefit of such agency;

5-a. Undertake to furnish or make available to the district attorneys of the state such supportive services and technical assistance as the commissioner and any one or more of the district attorneys shall agree are appropriate to promote the effective performance of his or their prosecutorial functions.

6. Establish, through electronic data processing and related procedures, a central data facility with a communication network serving qualified agencies anywhere in the state, so that they may, upon such terms and conditions as the commissioner, and the appropriate officials of such qualified agencies shall agree, contribute information and have access to information contained in the central data facility, which shall include but not be limited to such information as criminal record, personal appearance data, fingerprints, photographs, and handwriting samples;

7. Receive, process and file fingerprints, photographs and other descriptive data for the purpose of establishing identity and previous criminal record;

8. Adopt appropriate measures to assure the security and privacy of identification and information data;

8-a. Charge a fee when, pursuant to statute or the regulations of the division, it conducts a search of its criminal history records and returns a report thereon in connection with an application for employment or for a license or permit. The division shall adopt and may, from time to time, amend a schedule of such fees which shall be in amounts determined by the division to be reasonably related to the cost of conducting such searches and returning reports thereon but, in no event, shall any such fee exceed ten dollars. Except as provided in section three hundred fifty-nine-e of the general business law, the fee shall be paid to the division by the applicant and shall accompany the applicant's fingerprint card or application form upon which the search request is predicated.

9. Accept, agree to accept and contract as agent of the state and for and on behalf of the board, with the approval of the governor, any grant, including federal grants, or any gift for any of the purposes of this article;

10. Accept, with the approval of the governor, as agent of the state, any gift, grant, devise or bequest, whether conditional or unconditional (notwithstanding the provisions of section eleven of the state finance law), including federal grants, for any of the purposes of this article. Any monies so received may be expended by the division to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state monies appropriated for the purposes of this article;

11. Enter into contracts with any person, firm, corporation, municipality, or governmental agency;

12. Make an annual report to the governor and legislature concerning its work during the preceding year, and such further interim reports to the governor, or to the governor and legislature, as it shall deem advisable, or as shall be required by the governor;

13. Adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of the functions, powers and duties of the division;

14. Do all other things necessary or convenient to carry out the functions, powers and duties expressly set forth in this article.

Formerly, § 824, added L.1972, c. 399, § 1; renumbered 837, and amended L.1973, c. 603, §§ 13, 16; L.1974, c. 654, § 3; L.1975, c. 831, § 1; L.1976, c. 548, § 1.

1976 Amendment. Subd. 8-a. L. 1976, c. 548, § 1, eff. 30 days after July 21, 1976, added subd. 8-a.

1975 Amendment. Subd. 5-a. L. 1975, c. 831, § 1, eff. Aug. 9, 1975, added subd. 5-a.

1974 Amendment. Subd. 4. L.1974, c. 654, § 3, eff. Jan. 1, 1975, deleted from par. (b) item relating to number of persons arrested for alleged commission of a felony, the particular felony for which the person was arrested and the disposition of the charge, including but not limited to, dismissal, acquittal, the offense to which defendant pleaded guilty, the offense defendant was convicted of after trial and the sentence, added par. (c), including incorporation of former provisions of par. (b), and added par. (d).

1973 Amendment. Subd. 4. L.1973, c. 603, § 16, eff. Sept. 1, 1973, added subd. 4 and repealed a prior subd. 4, which authorized research, studies and analysis of the administration of criminal justice, through personnel of the division or in cooperation with public or private agencies.

Effective Date. Section 25 of L. 1972, c. 399, provided that this section is effective Sept. 1, 1972.

Provisions Supplementary to L. 1974, c. 654. See note under section 837-a.

1. Police department records

Records of police and law departments are ordinarily excluded from public scrutiny in order to safeguard against misuse or inappropriate dissemination. Legal Aid Soc. of Suffolk County v. Mallon, 1973, 76 Misc. 2d 455, 351 N.Y.S.2d 63, modified on other grounds 47 A.D.2d 646, 364 N.Y.S.2d 17.

§ 837-a. Additional functions, powers and duties of the division

In addition to the functions, powers and duties otherwise provided by this article, the division shall:

1. Collect and analyze statistical and other information and data with respect to the number of persons charged with the commission of a felony by indictment or the filing of a superior court information, the felony with which the person was charged therein, the county within which the indictment or superior court information was filed, the disposition thereof including, but not limited to, as the case may be, dismissal, acquittal, the offense to which the defendant pleaded guilty, the offense the defendant was convicted of after trial, and the sentence.

2. Present to the governor, temporary president of the senate, minority leader of the senate, speaker of the assembly and the minority leader of the assembly a quarterly report containing the statistics and other information required by subdivision one hereof. The initial report required by this paragraph shall be for the period beginning September first, nineteen hundred seventy-three and ending December thirty-first, nineteen hundred seventy-three and shall be presented no later than January fifteen, nineteen hundred seventy-four. Thereafter, each quarterly report shall be presented no later than thirty days after the close of each quarter.

Added L.1973, c. 603, § 17; amended L.1974, c. 654, § 4; L.1975, c. 459, § 1.

§ 837-b. Duties of courts and peace officers

1. It is hereby made the duty of the state administrator of the unified court system; and of every sheriff, county or city commissioner of correction and head of every police department, state, county, or local, and also railroad, steamship, park, aqueduct and tunnel police and town constables, of every district attorney, of every probation agency; and of head of every institution or department, state, county and local, dealing with criminals and of every other officer, person or agency, dealing with crimes or criminals or with delinquency or delinquents, to transmit to the commissioner not later than the fifteenth day of each calendar month, or at such times as provided in the rules and regulations adopted by the commissioner, such information as may be necessary to enable him to comply with subdivision four of section eight hundred thirty-seven. Such reports shall be made upon forms which shall be supplied by the commissioner.

2. Such officers and agencies shall install and maintain records needed for reporting data required by the commissioner and shall give him or his accredited agents access to records for the purpose of inspection.

3. For every neglect to comply with the requirements of this section, the commissioner may apply to the supreme court for an order directed to such person responsible requiring compliance. Upon such application the court may issue such order as may be just, and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

Added L.1974, c. 654, § 5; amended L.1974, c. 655, § 1; L.1975, c. 459, § 2.

1975 Amendment. Subd. 1. L.1975, c. 459, § 2, eff. July 24, 1975, inserted "of the unified court system" and deleted "of criminal justice services" following "to the commissioner."

Subd. 2. L.1975, c. 459, § 2, eff. July 24, 1975, deleted "of criminal justice services" following "by the commissioner."

1974 Amendment. Subd. 1. L.1974, c. 655, § 1, eff. Sept. 1, 1974, substituted "duty of the state administrator" for "duty of every clerk of every court of criminal jurisdiction, both of courts of record and otherwise, including justice and city courts, or if there be no clerk, of every judge or justice of such court", and "section eight hundred thirty-seven" for "section 837."

Effective Date. L.1974, c. 654, § 16, provided that this section shall take effect Jan. 1, 1975.

Provisions Supplementary to L. 1974, c. 654. See note under section 837-a.

CORRECTION LAW

§ 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited

No application for any license or employment, to which the provisions of this article are applicable, shall be denied by reason of the applicant's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or

(2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

Added L.1976, c. 931, § 5.

Effective Date. Section effective Jan. 1, 1977 pursuant to L.1976, c. 931, § 7.

§ 753. Factors to be considered concerning a previous criminal conviction; presumption

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license or employment sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

Added L.1976, c. 931, § 5.

Effective Date. Section effective Jan. 1, 1977 pursuant to L.1976, c. 931, § 7.

§ 754. Written statement upon denial of license or employment

At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

Added L.1976, c. 931, § 5.

Effective Date. Section effective Jan. 1, 1977 pursuant to L.1976, c. 931, § 7.

§ 755. Enforcement

1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York city commission on human rights.

Added L.1976, c. 931, § 5.

PUBLIC OFFICERS LAW

ARTICLE 6—FREEDOM OF INFORMATION LAW [NEW]

§ 87. Access to agency records

1. (a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the administration of this article.

(b) Each agency shall promulgate rules and regulations, in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on public access to records in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

i. the times and places such records are available;

ii. the persons from whom such records may be obtained, and

iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by law.

2. Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access to records or portions thereof that:

(a) are specifically exempted from disclosure by state or federal statute;

(b) if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article;

(c) if disclosed would impair present or imminent contract awards or collective bargaining negotiations;

(d) are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(e) are compiled for law enforcement purposes and which, if disclosed, would:

i. interfere with law enforcement investigations or judicial proceedings;

ii. deprive a person of a right to a fair trial or impartial adjudication;

iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or

iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures;

(f) if disclosed would endanger the life or safety of any person;

(g) are inter-agency or intra-agency materials which are not:

i. statistical or factual tabulations or data;

ii. instructions to staff that affect the public; or

iii. final agency policy or determinations; or

(h) are examination questions or answers which are requested prior to the final administration of such questions.

3. Each agency shall maintain:

(a) a record of the final vote of each member in every agency proceeding in which the member votes;

(b) a record setting forth the name, public office address, title and salary of every officer or employee of the agency; and

(c) a reasonably detailed current list by subject matter, of all records in the possession of the agency, whether or not available under this article.

Added L.1977, c. 933, § 1.

§ 89. General provisions relating to access to records; certain cases

The provisions of this section apply to access to all records, except as hereinafter specified:

1. (a) The committee on public access to records is continued and shall consist of the lieutenant governor or the delegate of such officer, the secretary of state or the delegate of such officer, whose office shall act as secretariat for the committee, the commissioner of the office of general services or the delegate of such officer, the director of the budget or the delegate of such officer, and six other persons, none of whom shall hold any other state or local public office, to be appointed as follows: four by the governor, at least two of whom are or have been representatives of the news media, one by the temporary president of the senate, and one by the speaker of the assembly. The persons appointed by the temporary president of the senate and the speaker of the assembly shall be appointed to serve, respectively, until the expiration of the terms of office of the temporary president and the speaker to which the temporary president and speaker were elected. The four persons presently serving by appointment of the governor for fixed terms shall continue to serve until the expiration of their respective terms. Thereafter, their respective successors shall be appointed for terms of four years. The committee shall hold no less than four meetings annually. The members of the committee shall be entitled to reimbursement for actual expenses incurred in the discharge of their duties.

(b) The committee shall:

i. furnish to any agency advisory guidelines, opinions or other appropriate information regarding this article;

ii. furnish to any person advisory opinions or other appropriate information regarding this article;

iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of section eighty-seven of this article;

iv. request from any agency such assistance, services and information as will enable the committee to effectively carry out its powers and duties; and

v. report on its activities and findings, including recommendations for changes in the law, to the governor and the legislature annually, on or before December fifteenth.

2. (a) The committee on public access to records may promulgate guidelines regarding deletion of identifying details or withholding of records otherwise available under this article to prevent unwarranted invasions of personal privacy. In the absence of such guidelines, an agency may delete identifying details when it makes records available.

(b) An unwarranted invasion of personal privacy includes, but shall not be limited to:

i. disclosure of employment, medical or credit histories or personal references of applicants for employment;

ii. disclosure of items involving the medical or personal records of a client or patient in a medical facility;

iii. sale or release of lists of names and addresses if such lists would be used for commercial or fund-raising purposes;

iv. disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant to the work of the agency requesting or maintaining it; or

v. disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency.

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

i. when identifying details are deleted;

ii. when the person to whom a record pertains consents in writing to disclosure;

iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him.

3. Each entity subject to the provisions of this article, within five business days of the receipt of a written request for a record reasonably described, shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgement of the receipt of such request and a statement of the approximate date when such request will be granted or denied. Upon payment of, or offer to pay, the fee prescribed therefor, the entity shall provide a copy of such record and certify to the correctness of such copy if so requested, or as the case may be, shall certify that it does not have possession of such record or that such record cannot be found after diligent search. Nothing in this article shall be construed to require any entity to prepare any record not possessed or maintained by such entity except the records specified in subdivision three of section eighty-seven and subdivision three of section eighty-eight.

4. (a) Any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body, who shall within seven business days of the receipt of such appeal fully explain in writing to the person requesting the record the reasons for further denial, or provide access to the record sought. In addition, each agency shall immediately forward to the committee on public access to records a copy of such appeal and the determination thereon.

(b) Any person denied access to a record in an appeal determination under the provisions of paragraph (a) of this subdivision may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. In the event that access to any record is denied pursuant to the provisions of subdivision two of section eighty-seven of this article, the agency involved shall have the burden of proving that such record falls within the provisions of such subdivision two.

5. Nothing in this article shall be construed to limit or abridge any otherwise available right of access at law or in equity of any party to records.

Added L.1977, c. 933, § 1.

§ 86. Definitions

As used in this article, unless the context requires otherwise:

1. "Judiciary" means the courts of the state, including any municipal or district court, whether or not of record.

2. "State legislature" means the legislature of the state of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof.

3. "Agency" means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature.

4. "Record" means any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.

Added L.1977, c. 933, § 1.

§ 14-264. **Record to be kept; items of record.**—The superintendent or other person having charge of prisoners shall keep a record showing, the name, age, date of sentence, length of sentence, crime for which convicted, home address, next of kin, and the conduct of each prisoner received. (1927, c. 178, s. 2.)

§ 15-206. **Cooperation with Department of Correction and officials of local units.** — It shall be the duty of the Secretary of Correction and the Department of Correction to cooperate with each other to the end that the purposes of probation and parole may be more effectively carried out. When requested, each shall make available to the other case records in his possession, and in cases of emergency, where time and expense can be saved, shall provide investigation service.

It is hereby made the duty of every city, county, or State official or department to render all assistance and cooperation within his or its fundamental power which may further the objects of this Article. The State Department of Correction, the Secretary of Correction, and the probation officers are authorized to seek the cooperation of such officials and departments, and especially of the county superintendents of social services and of the Department of Human Resources. (1937, c. 132, s. 10; 1961, c. 139, s. 2; 1969, c. 982; 1973, c. 476, s. 138; c. 1262, s. 10.)

§ 15-207. **Records treated as privileged information.** — All information and data obtained in the discharge of official duty by any probation officer shall be privileged information, shall not be receivable as evidence in any court, and shall not be disclosed directly or indirectly to any other than the judge or to others entitled under this Article to receive reports, unless and until otherwise ordered by a judge of the court or the Secretary of Correction. (1937, c. 132, s. 11; 1973, c. 1262, s. 10.)

ARTICLE 23.

Expunction of Records of Youthful Offenders.

§ 15-223. **Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor.** — (a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, sheriff of the county wherein the petitioner was convicted, and official records of the Federal Bureau of Investigation and the State Bureau of Investigation, all showing that the petitioner has not been convicted of a felony or misdemeanor under the laws of the United States or the laws of this State or any other state at any time prior to the conviction for the misdemeanor in question or during the two-year period following the conviction for the misdemeanor in question.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, and petitioner was not 18 years old at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the conviction and the clerk shall forward a certified copy of the order to all law-enforcement agencies concerned and to the F.B.I. and S.B.I. with the cost thereof to be taxed against the petitioner.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge. (1973, c. 47, s. 2; c. 748; 1975, c. 650, s. 5.)

§ 17A-1. Findings and policy. — The General Assembly finds that the administration of criminal justice is of statewide concern, and that proper administration is important to the health, safety and welfare of the people of the State and is of such nature as to require education and training of a professional nature. It is in the public interest that such education and training be made available to persons who seek to become criminal justice officers, persons who are serving as such officers in a temporary or probationary capacity, and persons already in regular service. (1971, c. 963, s. 1.)

§ 17A-3. North Carolina Criminal Justice Training and Standards Council established; members; terms; vacancies. — (a) There is hereby established the North Carolina Criminal Justice Training and Standards Council, hereinafter called "the Council" in the Executive Office of the Governor (or the Department of Justice). The Council shall be composed of 21 members as follows:

(1) Sheriffs. — Five sheriffs or other individuals serving in sheriffs' departments, one of whom shall be selected by the North State Law Enforcement Officers Association and four selected by the North Carolina Sheriffs' Association.

(2) Police Officers. — Five police chiefs or other individuals serving in police departments, one of whom shall be selected by the North State Law Enforcement Officers Association and four selected by the North Carolina Association of Police Executives.

(3) Departments. — A representative of the Department of Justice to be selected by the Attorney General; a representative of the Department of Motor Vehicles to be selected by the Commissioner of Motor Vehicles; a representative for the correctional system to be selected by the Governor; a representative for the court system to be selected by the Chief Justice.

(4) At-Large Groups and Ex Officio Members. — Three members at large to be selected by the Governor. The Director of the Institute of Government and the Director of Law-Enforcement Training in the Department of Community Colleges, the Director of Criminal Justice Programs at East Carolina University and the Director of Criminal Justice Programs of North Carolina University at Charlotte, who shall be permanent members of the Council.

(b) The members shall be appointed for staggered terms and the initial appointments shall be made prior to September 1, 1971, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a), one member from subdivision (2) of subsection (a), one from subdivision (3) representing the Department of Motor Vehicles, one from subdivision (3) representing the court system, and one from subdivision (4) appointed by the Governor.

For the terms of two years: two members from subdivision (1) of subsection (a), two members from subdivision (2) of subsection (a), one from subdivision (3) representing the Department of Justice, and one from subdivision (4) appointed by the Governor.

For the terms of three years: two members from subdivision (1) of subsection (a), two members from subdivision (2) of subsection (a), one member from subdivision (3) representing the correctional system, and one from subdivision (4) appointed by the Governor.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Director of the Institute of Government, the Director of Law-Enforcement Training of the Department of Community Colleges, the Directors of Criminal Justice Programs at East Carolina University and the University of North Carolina at Charlotte shall be continuing members of the Council during their tenure as Director.

Members of the Council who are public officers shall serve ex officio and shall perform their duties on the Council in addition to the duties of their office.

(c) Vacancies in the Council occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. (1971, c. 963, s. 3.)

§ 17A-6. Powers of council; appointment of director. — (a) In addition to powers conferred upon the Council elsewhere in this Chapter, the Council shall have the power to:

(1) Promulgate rules and regulations for the administration of this Chapter including the authority to require the submission of reports and information by criminal justice agencies and departments within this State relevant to employment, education and training.
(2) Establish minimum educational and training standards for employment as a criminal justice officer: (i) in temporary or probationary status, and (ii) in permanent positions.
(3) Certify persons as being qualified under the provisions of this Chapter to be criminal justice officers.
(4) Consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of criminal justice training schools and programs or courses of instruction.
(5) To establish minimum standards and levels of education or equivalent experience for all criminal justice instructors, teachers or professors.
(6) Conduct and stimulate research by public and private agencies which shall be designed to improve education and training in the administration of criminal justice.
(7) Make recommendations concerning any matters within its purview pursuant to this Chapter.
(8) Repealed by Session Laws 1975, c. 372, s. 2.
(9) Appoint such advisory committees as it may deem necessary.
(10) Make such evaluations as may be necessary to determine if governmental units are complying with the provisions of this Chapter.
(11) Adopt and amend bylaws, consistent with law, for its internal management and control.

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(12) Enter into contracts and do such things as may be necessary and incidental to the administration of its authority pursuant to this Chapter.

(b) The Attorney General shall appoint a director from a list of three names recommended to him by the Council. If, in the opinion of the Attorney General, none of the three persons recommended have the necessary qualifications for the position of director, the Council shall submit another list of three names, from which the Attorney General shall appoint a director. The director shall be responsible to and shall serve at the pleasure of the Attorney General. (1971, c. 963, s. 6; 1975, c. 372, s. 2.)

Chapter 17B.

North Carolina Criminal Justice Education and Training System.

§ 17B-1. Definitions. — As used in this Article, unless the context otherwise requires:

"Center" means the North Carolina Criminal Justice Education and Training Center.

"The Council" means the North Carolina Criminal Justice Education and Training Council.

"Criminal justice agencies" means the State and local law-enforcement agencies, the State and local police traffic service agencies, the State correctional agencies, the jails and other correctional agencies maintained by local governments, and the courts of the State.

"Department" means the Department of Justice. (1973, c. 749.)

§ 17B-2. System established. — The North Carolina Department of Justice shall establish a North Carolina Criminal Justice Education and Training System. The System shall consist of a cooperative arrangement between criminal justice agencies, both State and local, to provide education and training to the officers and employees of the criminal justice agencies of the State of North Carolina and its local governments. The System shall include the educational and training programs offered by the Criminal Justice Education and Training Center as well as those conducted by any other public agencies or institutions within the State which are engaged in criminal justice education and training and desire to be affiliated with the System for the purpose of achieving greater coordination of criminal justice education and training efforts in North Carolina. (1973, c. 749.)

§ 17B-3. Center established. — The North Carolina Department of Justice shall establish a North Carolina Criminal Justice Education and Training Center. The Center shall provide a comprehensive educational and training program for agents of the State Bureau of Investigation, for other employees of the Department of Justice and for the employees of any State criminal justice agency which desires to affiliate with the Center for purposes of education and training.

The Department of Justice, through the Center, also may provide educational and training programs for local criminal justice personnel upon request and is encouraged to develop programs which will enhance the skills of local criminal justice officials. In addition the Department of Justice is authorized to provide comprehensive programs designed to qualify persons as instructors of criminal justice education and training at the local level. (1973, c. 749.)

Chapter 17B.

North Carolina Criminal Justice Education and Training System.

Sec.

§ 17B-4. North Carolina Criminal Justice Education and Training System Council — organization. — (a) Membership. — The North Carolina Criminal Justice Education and Training System Council shall be composed of 41 members as follows:

(1) Four representatives of sheriffs' departments, one of whom shall be selected by the North State Law Enforcement Officers' Association and three selected by the North Carolina Sheriffs' Association.

(2) Four representatives of police departments, one of whom shall be selected by the North State Law Enforcement Officers' Association and three selected by the North Carolina Association of Police Executives.

(3) Two county commissioners selected by the North Carolina Association of County Commissioners.

(4) Two mayors selected by the North Carolina League of Municipalities.

(5) One criminal justice educator selected by the North Carolina Association of Criminal Justice Education.

(6) One law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association.

(7) Five civilian members at large to be selected by the Governor from the general private sector.

(8) One superior court judge, one district court judge and one district attorney of the General Court of Justice, each of these individuals to be selected by the members of their respective groups in general meeting assembled.

(9) The Attorney General, the Director of the Administrative Office of the Courts, the Secretary of Correction, the Director of Prisons, the Director of Jail and Detention Services, the Director of Adult Probation and Parole, the Director of Youth Development, the Director of the State Bureau of Investigation, the Commissioner of Motor Vehicles, the Commander of the State Highway Patrol, the Executive Director of the Wildlife Resources Commission, the Commissioner of Commercial and Sports Fisheries, the Chairman of the State Board of Alcoholic Control, the Coordinator of the Governor's Highway Safety Program, the President of Community Colleges of the Department of Education, and the Director of the Institute of Government, all of whom shall serve ex officio.

(10) One member of the North Carolina Senate to be appointed by the Lieutenant Governor; one member of the North Carolina House of Representatives to be appointed by the Speaker of the House; and one member from the public at large to be selected by the Attorney General. The initial appointments shall be made prior to July 1, 1975 and the term of successors shall begin on July 1 of each year thereafter.

(1975, c. 227; c. 658, ss. 1, 2.)

Editor's Note. —

The first 1975 amendment, in subdivision (9) of subsection (a), inserted "Director of Prisons" preceding "the Director of Jail and Detention Services" and substituted "Director of Adult Probation and Parole, the Director of Youth Development" for "Secretary of Correction, the Secretary of Correction, the Secretary of

§ 17B-5. North Carolina Criminal Justice Education and Training System Council — duties. — The North Carolina Criminal Justice Education and Training System Council shall have the following duties:

(1) It shall formulate basic plans for and promote the development of a comprehensive system of education and training for the officers and employees of criminal justice agencies consistent with the regulations and standards of the North Carolina Criminal Justice Training and Standards Council and shall provide advice, counsel, and leadership in bringing together the various components of the System and in implementing and operating the System.

(2) It may adopt and amend bylaws, consistent with law, for its internal management and control.

(3) It may establish an executive committee and such other committees of the Council and such advisory bodies as it deems appropriate and may determine their respective powers and duties.

(4) The Council may accept for any of its purposes and functions under this Article any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation. Any arrangements pursuant to this section shall be detailed in the annual report of the Council. Such reports shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received by the Council pursuant to this section shall be deposited in the State treasury to the account of the System. All moneys involved shall be subject to audit by the State Auditor. (1973, c. 749.)

§ 17B-6. Functions of Department of Justice. — The Department of Justice shall have the following powers and duties with respect to the Criminal Justice Education and Training System:

(1) It may, after consultation with representatives of local criminal justice agencies, plan, organize, staff and conduct instructional and training programs to be offered through the System to local criminal justice agencies upon their request.

(2) It shall provide any personnel deemed necessary for the development, implementation and maintenance of the System as a whole, provided appropriations are made for such positions by the General Assembly or funds are otherwise available.

(3) It shall maintain liaison among local, State and federal agencies with respect to criminal justice education and training.

(4) It shall have legal custody of all books, papers, documents, other records and property relating to the System as a whole.

(5) It shall employ the staff of the Center and direct the operation of it in cooperation with other affiliated agencies.

(6) It shall make an annual report to the North Carolina Criminal Justice Education and Training System Council.

(7) It may enter into contracts and do such things as may be necessary and incidental to the administration of its authority pursuant to this Article. (1973, c. 749.)

ARTICLE 3.

Division of Criminal Statistics.

§ 114-10. Division of Criminal Statistics. — The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals,

together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.

(3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(5) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1.)

§ 114-10.1. Police Information Network. — (a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and correlated under authority of G.S. 114-10 of this Article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Department of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The Attorney General may call upon the Governor's Committee on Law and Order for advice and such other assistance that the Committee may be authorized to render. (1969, c. 1267, s. 2.)

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants. — The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage

to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson, or arson, damage of, theft from, or theft of, or misuse of, any state-owned personal property, buildings, or other real property.

All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of G.S. 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that all records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the district attorney of any district if the same concerns persons or investigations in his district.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund. (1937, c. 349, s. 6; 1947, c. 280; 1965, c. 772; 1973, c. 47, s. 2.)

§ 114-18. Governor authorized to transfer activities of Central Prison Identification Bureau to the new Bureau; photographing and fingerprinting records. — The records and equipment of the Identification Bureau now established at Central Prison shall be made available to the said Bureau of Investigation, and the activities of the Identification Bureau now established at Central Prison may, in the future, if the Governor deem advisable, be carried on by the Bureau hereby established; except that the Bureau established by this Article shall have authority to make rules and regulations whereby the photographing and fingerprinting of persons confined in the Central Prison, or clearing through the Central Prison, or sentenced by any of the courts of this State to service upon the roads, may be taken and filed with the Bureau. (1937, c. 349, s. 2; 1939, c. 315, s. 6.)

§ 114-19. Criminal statistics. — It shall be the duty of the State Bureau of Investigation to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or cooperative action on the part of the criminals, reporting such conditions, and to cooperate with all officials in detecting and preventing. (1965, c. 1049, s. 1; 1973, c. 1286, s. 19.)

§ 132-1. "Public records" defined. — "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government. (1935, c. 265, s. 1; 1975, c. 787, s. 1.)

§ 132-1.1. **Confidential communications by legal counsel to public board or agency; not public records.** — Public records, as defined in G.S. 132-1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney-at-law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132-1 three years from the date such communication was received by such public board, council, commission or other governmental body. (1975, c. 662.)

§ 132-2. **Custodian designated.** — The public official in charge of an office having public records shall be the custodian thereof. (1935, c. 265, s. 2.)

§ 132-3. **Destruction of records regulated.** — No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121-5, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a misdemeanor and upon conviction fined not less than ten dollars ($10.00) nor more than five hundred dollars ($500.00). (1935, c. 265, s. 3; 1943, c. 237; 1953, c. 675, s. 17; 1957, c. 330, s. 2; 1973, c. 476, s. 48.)

§ 132-4. **Disposition of records at end of official's term.** — Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the Department of Cultural Resources, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of 10 days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a misdemeanor and upon conviction imprisoned for a term not exceeding two years or fined not exceeding one thousand dollars ($1,000) or both. (1935, c. 265, s. 4; 1943, c. 237; 1973, c. 476, s. 48; 1975, c. 696, s. 1.)

§ 132-5. **Demanding custody.** — Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for 10 days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a misdemeanor and upon conviction imprisoned for a term not exceeding two years or fined not exceeding one thousand dollars ($1,000) or both. (1935, c. 265, s. 5; 1975, c. 696, s. 2.)

§ 132-5.1. **Regaining custody; civil remedies.** — (a) The Secretary of the Department of Cultural Resources or his designated representative or any public official who is the custodian of public records which are in the possession of a person or agency not authorized by the custodian or by law to possess such public records may petition the Superior Court in the county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such public records. The court may order such public records to be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the petitioner may request that the court enforce such order through its contempt power and procedures.

(b) At any time after the filing of the petition set out in subsection (a) or contemporaneous with such filing, the public official seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to grant one of the following provisional remedies:

(1) An order directed at the sheriff commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth; or

(2) A preliminary injunction preventing the sale, removal, disposal or destruction of or damage to such public records pending a final judgment by the court.

(c) The judge or court aforesaid shall issue an order of seizure or grant a preliminary injunction upon receipt of an affidavit from the petitioner which alleges that the materials at issue are public records and that unless one of said provisional remedies is granted, there is a danger that such materials shall be sold, secreted, removed out of the State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if not seized or if injunctive relief is not granted.

(d) The aforementioned order of seizure or preliminary injunction shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner. (1975, c. 787, s. 2.)

§ 132-6. **Inspection and examination of records.** — Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law. (1935, c. 265, s. 6.)

§ 132-7. **Keeping records in safe places; copying or repairing; certified copies.**—Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any State, county, or municipal records are in need of repair, restoration, or rebinding, the head of such State agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that the records in need of repair, restoration, or rebinding be removed from the building or office in which such records are ordinarily kept, for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original. (1935, c. 265, s. 7; 1951, c. 294.)

§ 132-8. **Assistance by and to Department of Cultural Resources.** — The Department of Cultural Resources shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, filing and making available the public records in their custody. When requested by the Department of Cultural Resources, public officials shall assist the Department in the preparation of an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the Secretary of Cultural Resources, establishing a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the Department of Cultural Resources shall (subject to the availability of necessary space, staff, and other facilities for such purposes) make available space in its Records Center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled. (1935, c. 265, s. 8; 1943, c. 237; 1959, c. 68, s. 2; 1973, c. 476, s. 48.)

§ 132-8.1. **Records management program administered by Department of Cultural Resources; establishment of standards, procedures, etc.; surveys.** — A records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of official records shall be administered by the Department of Cultural Resources. It shall be the duty of that Department, in cooperation with and with the approval of the Department of Administration, to establish standards, procedures, and techniques for effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records. It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government to cooperate with the Department of Cultural Resources in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government. (1961, c. 1041; 1973, c. 476, s. 48.)

§ 132-8.2. **Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof.** — In cooperation with the head of each State agency and the governing body of each county, municipality, and other subdivision of government, the Department of Cultural Resources shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and to the protection of the rights and interests of persons, and, within the limitations of funds available for the purpose, shall make or cause to be made preservation duplicates or designate as preservation duplicates existing copies of such essential public records. Preservation duplicates shall be durable, accurate, complete and clear, and such duplicates made by a photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces and forms a durable medium for so reproducing the original shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original record. Such preservation duplicates shall be preserved in the place and manner of safekeeping prescribed by the Department of Cultural Resources. (1961, c. 1041; 1973, c. 476, s. 48.)

§ 132-9. **Access to records.** — Any person who is denied access to public records for purposes of inspection, examination or copying may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders. (1935, c. 265, s. 9; 1975, c. 787, s. 3.)

§ 143B-338. **Governor's Law and Order Commission — powers and duties.** — (a) The Law and Order Commission shall have the following powers and duties:

(1) To assist and participate with State and local law-enforcement agencies to improve law enforcement and the administration of criminal justice;
(2) To make studies and recommendations for the improvement of law enforcement and the administration of criminal justice;
(3) To encourage public support and respect for law and order;
(4) To seek ways to continue to make North Carolina a safe and secure State for its citizens;
(5) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work; and
(6) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary.

(b) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for law and order purposes which may be made available for the State by the federal government. The Law and Order Commission shall be the State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all grants to the State by the Law-Enforcement Assistance Administration of the United States Department of Justice. In respect to such grants, the Commission shall have authority to review, approve and maintain general oversight of the State plan and its implementation, including subgrants and allocations to local units of government.

All decisions and grants heretofore made by the Committee on Law and Order shall remain in full force and effect unless and until repealed or superseded by action of the Law and Order Commission established herein. All actions adopted by the Commission shall be enforced by the Administrator, Law and Order Section, of the Department of Natural and Economic Resources. (1975, c. 663.)

§ 143B-339. **Law and Order Section of Department of Natural and Economic Resources.** — (a) There is hereby established, within the Department of Natural and Economic Resources, the Law and Order Section, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) The Department of Natural and Economic Resources shall provide clerical and other services required by the Law and Order Commission, and shall administer the State Law-Enforcement Assistance Program and such additional related programs as may be established by or assigned to the Commission. Administrative responsibilities shall include, but are not limited to, the following:

(1) Compile data, establish needs and set priorities for funding as policy recommendations for the Commission;

(2) Prepare statewide plans for adoption by the Commission which are designated [designed] to improve systematically the administration of criminal justice and the reduction of crime in North Carolina and revise them from time to time as may be appropriate;

(3) Advise State and local interests of opportunities for securing federal assistance for crime reduction and for improving criminal justice administration and planning within the State of North Carolina;

(4) Stimulate and seek financial support from federal, State, and local government and private sources for programs and projects which implement adopted criminal justice administration improvement and crime reduction plans;

(5) Assist State agencies and units of general local government and combinations thereof in the preparation and processing of applications for financial aid to support improved criminal justice administration, planning, and crime reduction;

(6) Encourage and assist in the coordination of programs and activities of the several interests in the criminal justice system at the federal, State and local government levels in the preparation and implementation of adopted criminal justice administration improvements and crime reduction plans;

(7) Apply for, receive, disburse and audit the use of funds received for the program from any public and private agencies and instrumentalities for criminal justice administration, planning, and crime reduction purposes;

(8) Enter into, monitor and evaluate the results of contracts and agreements necessary or incidental to the discharge of responsibilities assigned;

(9) Take such other actions as may be necessary and appropriate to carry out assigned duties and responsibilities. (1975, c. 663.)

§ 148-74. **Records Section.** — Case records and related materials compiled for the use of the Secretary of Correction and the Parole Commission shall be maintained in a single central file system designed to minimize duplication and maximize effective use of such records and materials. When an individual is committed to the State prison system after a period on probation, the probation files on that individual shall be made a part of the combined files used by the Department of Correction and the Parole Commission. The Secretary of Correction shall cooperate with the Secretary of Correction and the Secretary of Correction in joint efforts aimed at developing accurate and comprehensive case records on individual offenders. The administration of the Records Section shall be under the control and direction of the Secretary of Correction. (1925, c. 228, s. 1; 1953, c. 55, ss. 2, 4; 1967, c. 996, s. 12; 1973, c. 1262, s. 10.)

§ 148-76. **Duties of Records Section.** — The Records Section shall maintain the combined case records and receive and collect fingerprints, photographs, and other information to assist in locating, identifying, and keeping records of criminals. The information collected shall be classified, compared, and made available to law-enforcement agencies, courts, correctional agencies, or other officials requiring criminal identification, crime statistics, and other information respecting crimes and criminals. (1925, c. 228, s. 3; 1953, c. 55, s. 4; 1967, c. 996, s. 12.)

§ 148-77. **Statistics, research, and planning.** — In order to facilitate regular improvement in the structure, administration, and programs of the Department of Correction, there shall be established within the Department organizational units responsible for statistics, research, and planning. The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs to compile and analyze statistics and to conduct research in criminology and correction. (1925, c. 228, s. 4; 1967, c. 996, s. 12.)

§ 148-80. **Seal of Records Section; certification of records.** — A seal shall be provided to be affixed to any paper, record, copy or form or true copy of any of the same in the files or records of the Records Section, and when so certified under seal by the duly appointed custodian, such record or copy shall be admitted as evidence in any court of the State. (1925, c. 228, s. 7; 1953, c. 55, s. 4; 1967, c. 996, s. 12.)

CHAPTER 12-60

BUREAU OF CRIMINAL INVESTIGATION

12-60-01. Bureau created.—A bureau of the state government, under the attorney general, is hereby created and is designated as the bureau of criminal investigation, hereinafter referred to as the bureau.

Source: S. L. 1965, ch. 111, § 1; 1971, ch. 140, § 1.

12-60-05. Attorney general — Duties — Appointment of personnel.—The attorney general shall have the responsibility of and shall exercise absolute control and management of the bureau. The attorney general shall appoint and fix the salary of a chief of the bureau, such special agents, and such other employees as he deems necessary to carry out the provisions of this chapter within the limits of legislative appropriations therefor.

Source: S. L. 1965, ch. 111, §§ 6, 7; 1967, ch. 117, § 7.

12-60-06. Furnishing of equipment.—The attorney general shall provide the bureau with necessary furniture, fixtures, apparatus, appurtenances, appliances, materials, and equipment as he deems necessary for the collection, filing, and preservation of all records required by law to be filed with the bureau or which he may authorize to require or procure respecting the identification and investigation of criminals, the investigation of crime and detection of the perpetrators thereof, and identification and information concerning stolen, lost, found, pledged, or pawned property.

Source: S. L. 1965, ch. 111, § 8.

12-60-07. Powers and duties of the bureau.—The duties and responsibilities of the bureau shall be:

1. To cooperate with and assist the criminal bureau of the department of justice at Washington, D. C., and similar departments in other states in establishing and carrying on a complete system of criminal identification.

2. To cooperate with and assist all judges, state's attorneys, sheriffs, chiefs of police, and all other law enforcement officers of this or any other state and of the federal government in establishing such system of criminal identification.
3. To file for record the fingerprint impressions of every person confined in any penitentiary or jail when such person is suspected of having committed a felony or of being a fugitive from justice, and to file such other information as they may receive from the law enforcement officers of this or any other state, or from the federal government.
4. To assist the sheriffs and other peace officers in establishing a system for the apprehension of criminals and detection of crime.
5. When called upon by any state's attorney, sheriff, police officer, marshal, or other peace officers, the superintendent, chief of the bureau, and their investigators may assist, aid, and cooperate in the investigation, apprehension, arrest, detention, and conviction of all persons believed to be guilty of committing any felony within the state.
6. To perform such other duties in the investigation, detection, apprehension, prosecution, or suppression of crimes as may be assigned by the attorney general in the performance of his duties.
7. To provide assistance from time to time in conducting police schools for training peace officers in their powers and duties, and in the use of approved methods for detection, identification, and apprehension of criminals and to require attendance at such police schools.
8. To accumulate, keep, and maintain a file for the identification of persons convicted of issuing false and fraudulent checks, no account checks, and nonsufficient funds checks, and to aid local law enforcement officials in the detection, apprehension, and conviction of said persons.
9. To perform the inspection and enforcement duties for the attorney general's licensing department.
10. To detect and apprehend persons illegally possessing or disposing of drugs.

Source: S. L. 1965, ch. 111, § 9; 1967, ch. 116, § 1; 1971, ch. 142, § 1; 1973, ch. 114, § 1.

12-60-08. Powers of investigators.—For the purpose of carrying out the provisions of this chapter, the investigators shall have all the powers conferred by law upon any peace officer of this state.

Source: S. L. 1965, ch. 111, § 10.

12-60-09. Authorization of attorney general for investigations. — No investigation of the acts or conduct of any state agency or state official shall be investigated or made through or by the bureau or any employee thereof, without the authorization of the attorney general particularly specifying the office, department, or person to be investigated and the scope and purposes of the investigation.

Source: S. L. 1965, ch. 111, § 11.

12-60-10. Fingerprints, photographs, description of persons arrested for felony to be procured and filed.—The chief of the bureau shall procure and file for record in the offices of the bureau all the plates, fingerprints, photographs, outline pictures, descriptions, information, and measurements which can be procured of all persons who have been or shall be arrested for any felony under the laws of this or any other state, or of the United States, and of all well known and habitual criminals. The person in charge of any state penal institution and every state's attorney, sheriff, chief of police, or other police officer shall furnish any such material to the superintendent upon his request.

Source: S. L. 1965, ch. 111, § 12.

12-60-11. Enforcement officers to send fingerprints and descriptions of felons to the bureau—Report of the bureau to arresting officer.—All state's attorneys, sheriffs, chiefs of police, and other law enforcement officers shall take the fingerprints of any person arrested on a felony charge and of every person who, in the judgment of the arresting officer, is wanted on a felony charge or who, the arresting officer has reason to believe, is a fugitive from justice. Copies of such fingerprints in duplicate shall be transmitted to the superintendent within twenty-four hours after an arrested person is taken into custody, together with a description of and all available information respecting the arrested person. The chief of the bureau shall compare the fingerprints and descriptions received by him with those already on file in his office, and if he finds that the person arrested has a criminal record or is a fugitive from justice, he immediately shall inform the arresting officer of his findings together with the name or names under which such person has been previously arrested, and shall forward a carbon copy of his report to the state's attorney of the county in which the arrest was made. All state's attorneys, sheriffs, chiefs of police, and other law enforcement officers shall report to the bureau all complaints signed, warrants issued, and records of convictions and sentences for all offenses involving no account, insufficient funds, and false and fraudulent checks.

Source: S. L. 1965, ch. 111, § 13.

12-60-12. Officer may send fingerprints of persons having certain property in possession.—A sheriff may take and forward to the chief of the bureau the fingerprints of any person who has in his possession at the time of his arrest goods or property reasonably believed to have been stolen, or in whose possession is found a burglary outfit, tools, keys, or explosives believed by the sheriff to be intended for unlawful use, or who is carrying a concealed or deadly weapon without lawful authority, or who is in possession of any ink, dye, paper, or other articles usable in the making of counterfeit money, or who has in his possession any tools or equipment used in defacing or changing the numbers on motor vehicles, or who is believed to have been previously incarcerated in any state or federal penitentiary.

Source: S. L. 1965, ch. 111, § 14.

12-60-13. Court to ascertain criminal record of defendant—Furnish information of offense to the bureau.—The judge of the district court of the county in which a defendant is to be sentenced, or the state's attorney or sheriff thereof, shall ascertain the criminal record of every defendant convicted of a felony before sentence is passed on said defendant. The state's attorneys and sheriffs, upon the request of the chief of the bureau or the attorney general, shall furnish to the chief of the bureau a statement of facts relative to the commission or alleged commission of all felonies within their respective counties upon such blanks or in such form as may be requested by the chief of the bureau or the attorney general.

Source: S. L. 1965, ch. 111, § 15.

12-60-13.1. County and city officials to furnish crime statistics to superintendent.—In an effort to assist in controlling crime in the state through the use of reliable statistics relating to crimes and criminal activity, the superintendent, with the approval of the attorney general, may call upon and obtain from the clerks of district courts, county courts, county justice courts, municipal courts, sheriffs, police departments, and state's attorneys all information that he may deem necessary in ascertaining the condition of crimes and criminal activity in North Dakota. It shall be the duty of the said officials to furnish any such information so requested by the superintendent on whatever forms or in whatever manner he may prescribe.

Source: S. L. 1971, ch. 143, § 1.

12-60-15. Duty to furnish information.—The chief of the bureau shall furnish, upon application, all information pertaining to the identification of any person, a plate, photograph, outline picture, description, measurement, or any data of which person there is a record in the office of the bureau.

The information shall be furnished to all peace officers of the state, to the United States officers or officers of other states, territories, or possessions of the United States, or peace officers of other countries duly authorized to receive the same, upon application in writing accompanied by a certificate signed by the officer stating that the information applied for is necessary in the interest of the due administration of the laws, and not for the purpose of assisting a private citizen in carrying on his personal interests or in maliciously or uselessly harassing, degrading, or humiliating any person.

Source: S. L. 1965, ch. 111, § 17.

12-60-16. Report of arrested person's transfer, release, or disposition of case.—In any case in which a sheriff, police department, or other law enforcement agency makes an arrest and transmits a report of the arrest to the bureau of criminal investigation or to the federal bureau of investigation, it shall be the duty of such law enforcement agency to furnish a report to such bureaus whenever the arrested person is transferred to the custody of another agency or is released without having a complaint or accusation filed with a court.

When a complaint or accusation has been filed with a court against such an arrested person, the law enforcement agency having primary jurisdiction to investigate the offense alleged therein shall receive the disposition of that case from the appropriate court and shall transmit a report of such disposition to the same bureaus to which arrest data has been furnished.

Source: S. L. 1965, ch. 111, § 18.

Collateral References.

Right of exonerated arrestee to have fingerprints, photographs, or other criminal identification or arrest records expunged or restricted, 46 ALR 3d 900.

12-60-17. Superintendent to make rules and regulations.—The superintendent with the approval of the attorney general, pursuant to chapter 28-32, shall make and promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary and proper for the efficient performance of the bureau's duties. Such rules and regulations shall be printed and forwarded to each state's attorney, sheriff, constable, marshal, or other peace officer, and each of said officers shall assist the superintendent in the performance of his duties by complying with such rules and regulations.

Source: S. L. 1965, ch. 111, § 19.

12-60-18. Money collected paid into general fund.—All moneys collected or received, including all rewards for the apprehension or conviction of any criminal earned or collected by the superintendent, the chief of the bureau, his assistants, or any employee of his office, shall be paid into the general fund of the state.

Source: S. L. 1965, ch. 111, § 20.

12-60-19. Cooperation of bureau. — The bureau shall work and cooperate with the commission on peace officers' standards and training as heretofore established in the fields specified in section 54-50-02* and in such other related fields as said commission and the bureau may deem feasible.

Source: S. L. 1965, ch. 111, § 21.

*Note.

Section 54-50-02 was repealed by section 8 of chapter 117 of the 1967 Session Laws.

12-60-20. Bureau to act as a consumer fraud bureau.—The bureau shall also act as a consumer fraud bureau with regard to the use or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, and shall make full investigation of such activities and maintain adequate facilities for filing reports, examining persons and merchandise in regard thereto, and storing impounded books, records, accounts, papers, and samples of merchandise relating to same. The bureau shall further cooperate with other governmental agencies, national, state, or local, and with all peace officers of the state in regard thereto.

Source: S. L. 1965, ch. 111, § 22.

Cross-Reference.

State laboratories department to serve as consumer affairs office, see § 19-01-02.1.

12-60-21. State crime laboratory.—The attorney general shall have authority to establish a scientific laboratory to be a part of the bureau of criminal investigation. The attorney general shall specify the functions and duties of the laboratory.

Source: S. L. 1973, ch. 115, § 1.

12-60-22. Provision of laboratory facilities and technical personnel—Request.—The attorney general may, upon the request of any state's attorney, sheriff, chief of police, or other local, state, or federal law enforcement official, make available to such official so requesting, the bureau's laboratory facilities and personnel for the purpose of assisting in the investigation or detection of crimes and the apprehension or prosecution of criminals.

Source: S. L. 1973, ch. 115, § 2.

44-04-18. Access to public records—Penalty.—

1. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.
2. Violations of this section shall be punishable as an infraction.

Source: N.D.C.C.; S. L. 1977, ch. 416, § 1.

Cross-References.

Archival resources, public access to, see §§ 55-02.1-07, 55-02.1-08.

County Court Records.

This section did not apply to county court records. State ex rel. Williston Herald, Inc. v. O'Connell, 151 NW 2d 758.

Judicial Records.

The provisions of this section do not include or apply to county court records. Grand Forks Herald v. Lyons, 101 NW 2d 543.

Newspaper reporters have the right to inspect criminal records of county courts of increased jurisdiction, subject to the court's reasonable rules and regulations for such inspections. State v. O'Connell, 151 NW 2d 758, distinguishing Grand Forks Herald v. Lyons, 101 NW 2d 543.

[BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION]

§ 109.51 Creation of bureau of criminal identification and investigation.

There is hereby created in the office of the attorney general, a bureau of criminal identification and investigation to be located at the site of the London correctional institution. The attorney general shall appoint a superintendent of said bureau. The superintendent shall appoint, with the approval of the attorney general, such assistants as are necessary to carry out the functions and duties of the bureau as contained in sections 109.51 to 109.63, inclusive, of the Revised Code.

HISTORY: 130 v 9, § 1. Eff 9-24-63.

§ 109.52 Operations of the bureau.

The bureau of criminal identification and investigation may operate and maintain a criminal analysis laboratory and mobile units thereof, create a staff of investigators and technicians skilled in the solution and control of crimes and criminal activity, keep statistics and other necessary data, assist in the prevention of crime, and engage in such other activities as will aid law enforcement officers in solving crimes and controlling criminal activity.

HISTORY: 130 v 9, § 1. Eff 9-24-63.

§ 109.55 Coordination of law enforcement activities.

The superintendent of the bureau of criminal identification and investigation shall recommend co-operative policies for the co-ordination of the law enforcement work and crime prevention activities of all state and local agencies and officials having law enforcement duties to promote co-operation between such agencies and officials, to secure effective and efficient law enforcement, to eliminate duplication of work, and to promote economy of operation in such agencies.

HISTORY: 130 v 10, § 1. Eff 9-24-63.

See provisions, § 2 of HB 263 (130 v 1670), following RC § 109.51.

Research Aids

O-Jur2d
Crim. Law § 50

§ 109.56 Training local law enforcement authorities.

The bureau of criminal identification and investigation shall, where practicable, assist in training local law enforcement officers in crime prevention, detection, and solution when requested by local authorities, and, where practicable, furnish instruction to sheriffs, chiefs of police, and other law officers in the establishment of efficient local bureaus of identification in their districts.

HISTORY: 130 v 10, § 1. Eff 9-24-63.

§ 109.57 Duties of the superintendent of the bureau.

(A) The superintendent of the bureau of criminal identification and investigation shall procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and such other information as may be pertinent, of all persons who have been convicted of a felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, within the state, and of all well known and habitual criminals, from wherever procurable. The person in charge of any state correctional institution and the person in charge of any state institution having custody of a person suspected of having committed a felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, shall furnish such material to the superintendent of the bureau upon request. Fingerprints, photographs, or other descriptive information of a child under eighteen years of age shall not be procured by the superintendent or furnished by any person in charge of any state correctional institution, except as may be authorized in section 2151.313 [2151.31.3] of the Revised Code. Every court of record in this state shall send to the superintendent of the bureau a weekly report containing a summary of each case involving a felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses. Such summary shall include the style and number of the case, the dates of arrest, commencement of trial, and conviction, a statement of the offense and the conduct which constituted it, and the sentence or terms of probation imposed, or other disposition of the offender. The superintendent shall cooperate with and assist sheriffs, chiefs of police, and other law officers in the establishment of a complete system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on charge of felony or any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses. He shall also file for record the fingerprint impressions of all persons confined in any workhouse, jail, reformatory, or penitentiary, for the violation of state laws, and such other information as he may receive from law enforcement officials of the state and its subdivisions.

The superintendent shall carry out sections 2950.01 to 2950.08, inclusive, of the Revised Code, in regard to the registration of habitual sex offenders.

(B) The superintendent of the bureau of criminal identification and investigation shall prepare and furnish to every state penal and reformatory institution and to every court of record in this state standard forms for reporting

the information required under division (A) of this section.

(C) The superintendent of the bureau of criminal identification and investigation may operate a center for electronic, automated, or other data processing for the storage and retrieval of information, data, and statistics pertaining to criminals, criminal activity, crime prevention, law enforcement, and criminal justice, and may establish and operate a statewide communications network to gather and disseminate information, data, and statistics for the use of law enforcement agencies.

(D) The information and materials furnished to the superintendent pursuant to division (A) of this section are not public records under section 149.53 [149.43] of the Revised Code.

* HISTORY: 133 v H 956. Eff 9-16-70.

[§ 109.57.1] § 109.571 [Law enforcement communications committee.]

(A) There is hereby created a law enforcement communications committee, consisting of the superintendent of the bureau of criminal identification and investigation as chairman, and four members appointed by the superintendent to serve at his pleasure, one each of whom shall be a representative of the office of budget and management, the division of state highway patrol, the county sheriffs, and the chiefs of police.

(B) The committee shall meet at least once every six months, or more often upon call of the superintendent or the written request of any two members. Committee members shall receive no compensation for their services as such, but are entitled to their actual and necessary expenses incurred in the performance of committee duties, as determined by the state employees compensation board.

(C) The committee shall aid and encourage coordination and cooperation among law enforcement agencies in the operation and utilization of data processing facilities and equipment, and a statewide law enforcement communications network.

HISTORY: 133 v H 956 (Eff 9-16-70); 135 v S 174. Eff 12-4-73.

§ 109.58 Superintendent shall prepare a standard fingerprint impression sheet.

The superintendent of the bureau of criminal identification and investigation shall prepare standard impression sheets on which fingerprints may be made in accordance with the fingerprint system of identification. Such sheets may provide for other descriptive matter which the superintendent may prescribe. Such sheets shall be furnished to each sheriff, chief of police, and person in charge of every workhouse, reformatory, or penitentiary within the state.

HISTORY: 130 v 11, § 1. Eff 9-24-63.

§ 109.59 Fingerprint impression and descriptive measurement records.

The sheriff, chief of police, or other person in charge of each prison, workhouse, reformatory, or penitentiary shall send to the bureau of criminal identification and investigation, on forms furnished by the superintendent of such bureau, such fingerprint impressions and other descriptive measurements which the superintendent may require. Such information shall be filed, classified, and preserved by the bureau.

HISTORY: 130 v 11, § 1. Eff 9-24-63.

eff. 11-16-77

To amend section 109.60 of the Revised Code to provide for the return of fingerprints and other records upon request to any defendant in whose case a nolle prosequi is entered.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 109.60 of the Revised Code be amended to read as follows:

• Sec. 109.60. The sheriffs of the several counties and the chiefs of police of cities shall immediately upon the arrest of any person for any felony, on suspicion of any felony, or for a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, take his fingerprints, or cause the same to be taken, according to the fingerprint system of identification on the forms furnished by the superintendent of the bureau of criminal identification and investigation, and forward ~~the same~~ THEM, together with such other descriptions as may be required and with the history of the offense committed, to the bureau to be classified and filed. Should any accused be found not guilty of the offense charged OR A NOLLE PROSEQUI ENTERED IN ANY CASE, then ~~said~~ THE fingerprints and description shall be given to the accused upon his request. The superintendent shall compare the descriptions received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice or wanted by any jurisdiction in this or any other state or the United States or a foreign country for any offense, he shall at once inform the arresting officer of such fact and give appropriate notice to the proper authorities in the jurisdiction in which such person is wanted, or, if such jurisdiction is a foreign country, give appropriate notice to federal authorities for transmission to such foreign country. The names, under which each person whose identification is thus filed is known, shall be alphabetically indexed by the superintendent.

This section does not apply to a violator of a city ordinance unless the officers have reason to believe that such person is a past offender, or the crime is one constituting a misdemeanor on the first offense and a felony on subsequent offenses, or unless it is advisable for the purpose of subsequent identification. This section does not apply to any child under eighteen years of age, except as provided in section 2151.313 of the Revised Code.

SECTION 2. That existing section 109.60 of the Revised Code is hereby repealed.

§ 109.61 Descriptions, fingerprints, and photographs sent to bureau by sheriffs and chiefs of police.

Each sheriff or chief of police shall furnish the bureau of criminal identification and investigation with descriptions, fingerprints, photographs, and measurements of:

(A) Persons arrested who in such police official's judgment are wanted for serious offenses, are fugitives from justice, or in whose possession at the time of arrest are found goods or property reasonably believed to have been stolen;

(B) All persons in whose possession are found burglar outfits, burglar tools, or burglar keys, or who have in their possession high power explosives reasonably believed to be intended to be used for unlawful purposes;

(C) Persons who are in possession of infernal machines or other contrivances in whole or in part and reasonably believed by said sheriffs or chiefs of police to be intended to be used for unlawful purposes;

(D) All persons carrying concealed firearms or other deadly weapons reasonably believed to be carried for unlawful purposes;

(E) All persons who have in their possession inks, dies, paper, or other articles necessary in the making of counterfeit bank notes, or in the alteration of bank notes, or dies, molds, or other articles necessary in the making of counterfeit money and reasonably believed to be intended to be used by them for such unlawful purposes.

HISTORY: 130 v 12, § 1. Eff 9-24-63.

§ 109.62 Interstate, national, and international cooperation.

The superintendent of the bureau of criminal identification and investigation shall co-operate with bureaus in other states and with the federal bureau of investigation to develop and carry on a complete interstate, national, and international system of criminal identification and investigation.

HISTORY: 130 v 13, § 1. Eff 9-24-63.

§ 109.71 Creation of Ohio peace officer training council; members; definition of peace officer.

There is hereby created in the office of the attorney general the Ohio peace officer training council. Such council shall consist of nine members to be appointed by the governor with the advice and consent of the senate, selected as follows: one member representing the public; two members to be incumbent sheriffs; two members to be incumbent chiefs of police; one member from the bureau of criminal identification and investigation; one member from the state highway patrol; one member to be the special agent in charge of a field office of the federal bureau of investigation in the state; and one member from the state department of education, trade and industrial education services, law enforcement training.

As used in sections 109.71 to 109.77 of the Revised Code, "peace officer" means:

(A) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is commissioned and employed as a peace officer by a political subdivision of this state, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of Ohio, ordinances of a municipal corporation, or regulations of a board of county commissioners or board of township trustees, or any such laws, ordinances, or regulations.

(B) A policeman who is employed by a railroad company and appointed and commissioned by the governor pursuant to sections 4973.17 to 4973.22 of the Revised Code.

*HISTORY: 133 v H 111 (Eff 8-4-69); 133 v H 575 (Eff 11-21-69); 136 v S 272. Eff 8-19-76.

§ 109.73 Authority of council.

(A) The Ohio peace officer training council may recommend to the attorney general rules with respect to:

(1) The approval, or revocation thereof, of peace officer training schools administered by state, county, and municipal corporations, public school districts, and technical college districts;

(2) Minimum courses of study, attendance requirements, and equipment and facilities to be required at approved state, county, and municipal peace officer training schools;

(3) Minimum qualifications for instructors at approved state, county, and municipal peace officer training schools;

(4) The requirements of minimum basic training which peace officers appointed to probationary terms shall complete before being eligible for permanent appointment, and the time within which such basic training must be completed following such appointment to a probationary term;

(5) The requirements of minimum basic training which peace officers not appointed for probationary terms but appointed on other than a permanent basis shall complete in order to be eligible for continued employment or permanent appointment, and the time within which such basic training must be completed following such appointment on a non-permanent basis;

(6) Categories or classifications of advanced in-service training programs and minimum courses of study and attendance requirements with respect to such categories or classifications;

(7) Permitting persons appointed and commissioned as railroad policemen pursuant to sections 4973.17 to 4973.22 of the Revised Code to attend approved peace officer training schools, including the Ohio peace officer training academy, and to receive certificates of satisfactory completion of basic training programs, if the railroad companies sponsoring the policemen pay the entire cost of the training and certification and if trainee vacancies are available.

(B) The council shall appoint an executive director, with the approval of the attorney general, who shall hold office during the pleasure of the council. He shall perform such duties as may be assigned to him by the council. He shall receive a salary fixed pursuant to Chapter 124. of the Revised Code, and reimbursement for the expenses within the amounts available by appropriation. The executive director may appoint such officers, employees, agents, and consultants as he may deem necessary, prescribe their duties, and provide for reimbursement of their expenses within the amounts available therefor by appropriation and with the approval of council.

(C) The council may, in addition:

(1) Recommend studies, surveys, and reports to be made by the executive director regarding the carrying out of the objectives and purposes of sections 109.71 to 109.77 of the Revised Code;

(2) Visit and inspect any peace officer training school approved by the executive director or for which application for such approval has been made;

(3) Make recommendations, from time to time, to the executive director, attorney general and the general assembly, regarding the carrying out of the purposes of sections 109.71 to 109.77 of the Revised Code;

(4) Report to the attorney general from time to time and to the governor and to the general assembly at least annually, concerning the activities of the council;

(5) Perform such other acts as may be necessary or appropriate to carry out the powers and duties of the council as set forth in sections 109.71 to 109.77 of the Revised Code.

*HISTORY: 134 v S 396 (Eff 2-17-72); 136 v S 272. Eff 8-19-76.

§ 109.74 Attorney general may adopt and promulgate rules and regulations.

The attorney general, in his discretion, may in accordance with Chapter 119. of the Revised Code, adopt and promulgate any or all of the rules and regulations recommended by the Ohio peace officer training council to the attorney general pursuant to section 109.73 of the Revised Code. When the attorney general promulgates any rule or regulation recommended by the council, he shall transmit a certified copy thereof to the secretary of state.

HISTORY: 131 v 11. Eff 9-6-65.

§ 109.75 Powers and duties of executive director.

The executive director of the Ohio peace officer training council, on behalf of the council, shall have the following powers and duties, to be exercised with the general advice of the council and, to be exercised only in accordance with rules and regulations promulgated by the attorney general pursuant to section 109.74 of the Revised Code:

(A) To approve peace officer training schools administered by state, county, and municipal corporations, to issue certificates of approval to such schools, and to revoke such approval or certificate;

(B) To certify, as qualified, instructors at approved peace officer training schools and to issue appropriate certificates to such instructors;

(C) To certify peace officers who have satisfactorily completed basic training programs and to issue appropriate certificates to such peace officers;

(D) To cause studies and surveys to be made relating to the establishment, operation, and approval of state, county, and municipal peace officer training schools;

(E) To consult and cooperate with state, county, and municipal peace officer training schools for the development of advanced in-service training programs for peace officers;

(F) To consult and cooperate with universities, colleges, and institutes for the development of specialized courses of study in the state for peace officers in police science and police administration;

(G) To consult and cooperate with other departments and agencies of the state and federal government concerned with peace officer training;

(H) To perform such other acts as may be necessary or appropriate to carry out his powers and duties as set forth in sections 109.71 to 109.77, inclusive, of the Revised Code;

(I) To report to the council at each regular meeting of the council and at such other times as may be required.

HISTORY: 131 v 11. Eff 9-6-65.

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§ 109.78 Certification as special policemen; payment of cost.

(A) The executive director of the Ohio peace officer training council, on behalf of the council and in accordance with rules promulgated by the attorney general, shall certify persons who have satisfactorily completed approved training programs designed to qualify persons for positions as special policemen, security guards, or persons otherwise privately employed in a police capacity and issue appropriate certificates to such persons. Such programs shall cover only duties and jurisdiction of such security guards and special policemen privately employed in a police capacity when such officers do not qualify for training under section 109.71 of the Revised Code. A person attending an approved basic training program administered by the state shall pay to the agency administering the program the cost of his participation in the program as determined by the agency. A person attending an approved basic training program administered by a county or municipal corporation shall pay the cost of his participation in the program, as determined by the administering subdivision, to the county or the municipal corporation. Such certificate or the completion of twenty years of active duty as a peace officer shall satisfy the educational requirements for appointment or commission as a special policeman or special deputy of a political subdivision of this state.

(B) No public or private educational institution or port authority shall employ a person as a special policeman, security guard, or other position in which such person goes armed while on duty, who has not received a certificate of having satisfactorily completed an approved basic peace officer training program, unless such person has completed twenty years of active duty as a peace officer.

HISTORY: 133 v H 575 (Eff 11-21-69); 134 v H 1 (Eff 5-26-71); 134 v H 633 (Eff 4-3-72); 135 v S 192. Eff 9-23-74.

§ 109.79 [Training academy.]

The Ohio peace officer training council shall establish and conduct a training school for law enforcement officers of any political subdivision of the state. The school shall be known as the Ohio peace officer training academy.

The Ohio peace officer training council shall develop the training program, which shall include courses in both the civil and criminal functions of law enforcement officers, and shall establish rules and regulations governing qualifications for admission to the academy. The council may require competitive examinations to determine fitness of prospective trainees, so long as the examinations or other criteria for admission to the academy are consistent with the provisions of Chapter 124. of the Revised Code.

The Ohio peace officer training council shall determine tuition costs which shall be sufficient in the aggregate to pay the costs of operating the academy. The costs of acquiring and equipping the academy shall be paid from appropriations made by the general assembly to the Ohio peace officer training council for that purpose, or from gifts or grants received for that purpose.

The law enforcement officers, during the period of their training, shall receive compensation as determined by the political subdivision which sponsors them. Such political subdivision may pay the tuition costs of the law enforcement officers they sponsor.

The academy may, if trainee vacancies exist and the railroad company prepays the entire cost of the training, train and issue certificates of satisfactory completion to peace officers who are employed by a railroad company and who meet the qualifications established for admission to the academy. A railroad company is not entitled to reimbursement from the state for any amount paid for the cost of training the railroad company's peace officers.

HISTORY: 133 v H 1160 (Eff 8-31-70); 136 v S 272. Eff 8-19-76.

§ 149.43 Availability of public records.

As used in this section, "public record" means any record required to be kept by any governmental unit, including, but not limited to, state, county, city, village, township, and school district units, except records pertaining to physical or psychiatric examinations, adoption, probation, and parole proceedings, and records the release of which is prohibited by state or federal law.

All public records shall be open at all reasonable times for inspection. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time.

HISTORY: 130 v 155, § 1. Eff 9-27-63.

§ 149.99 Penalty.

Whoever violates section 149.43 or 149.351 [149.35.1] of the Revised Code shall forfeit not more than one hundred dollars for each offense to the state. The attorney general shall collect the same by civil action.

HISTORY: 130 v 155, § 1 (Eff 9-27-63); 131 v 177. Eff 11-1-65.

PERSONAL INFORMATION SYSTEMS

§ 1347.01 [Definitions.]

As used in Chapter 1347. of the Revised Code:

(A) "State agency" means the office of any elected state officer and any agency, board, commission, department, division, or educational institution of the state.

(B) "Local agency" means any municipal corporation, county, school district, special purpose district, or township of the state or any department, division, institution, instrumentality, board, commission, or bureau thereof.

(C) "Maintains" includes depositing information with a data processing center for storage, processing, or dissemination.

(D) "Personal information" means any information that describes anything about a person, or indicates actions done by or to a person, or indicates that a person possesses certain personal characteristics, and that contains a name, identifying number, symbol, or other identifier assigned to a person.

(E) "System" means a collection or group of records.

HISTORY: 136 v S 99. Eff 1-1-77.

The effective date of S 99 is set by section 2 of the act.

Cross-References to Related Sections

See RC §§ 1347.01, 1347.02, 1347.04, 1347.10 which refer to this chapter.

§ 1347.02 [Ohio personal information control board created; duties.]

(A) There is hereby created the Ohio personal information control board consisting of the director of administrative services and four members, two each of whom shall be members of each of the two major political parties, to be appointed by the governor with the advice and consent of the senate as follows: one chief executive officer of a municipality, one county commissioner, one member of a board of education, and one township trustee. Within ninety days of the effective date of this section, the governor shall make initial appointments to the commission. Of the initial appointments made to the commission, one shall be for a term ending one year after the effective date of this section, one shall be for a term ending two years after that date, one shall be for a term ending three years after that date, and one shall be for a term end-

ing four years after that date. Thereafter, terms of office shall be for four years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed, or until he vacates the public office he held at the time of his appointment, whichever occurs first. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of his term or the date on which he vacates his public office until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

Membership on the board does not constitute the holding of a public office or employment within the meaning of any section of the Revised Code. No member of the board shall be disqualified from holding any public office or employment, nor shall the member forfeit his public office or employment, by reason of his position as a member of the board, notwithstanding the provisions of any law to the contrary.

(B) The department of administrative services shall provide the staff assistance necessary for the performance of the board's duties.

(C) The board shall enforce and administer the provisions of Chapter 1347. of the Revised Code that are applicable to local agencies. The board shall also recommend to the general assembly any legislation necessary to improve the enforcement and administration of the law relating to personal information systems maintained by local agencies.

(D) Before adopting, amending, or rescinding rules, the board shall:

(1) Mail notice to each state-wide organization that it determines represents local agencies who would be affected by the proposed rule, amendment, or recission at least thirty-five days before any public hearing;

(2) Mail a copy of each proposed rule, amendment, or recission of a rule to any person who requests a copy, within five days after receipt of a request for such a copy;

(3) Consult with appropriate local agencies or their representatives including state-wide organizations of local governmental officials.

Although the board is expected to diligently discharge the duties set forth in this division, an unintentional failure to mail any notice or copy, or to consult with any person, does not invalidate any proceeding, rule, or action by the board.

HISTORY: 136 v S 99. Eff 1-1-77.

The effective date of S 99 is set by section 2 of the act.

§ 1347.03 [Annual notice of existence of personal information system.]

(A) Every state or local agency that maintains a personal information system shall, prior to the last day of January of each year, file notice of the existence and character of the system. State agencies shall file the notice with the director of the department of administrative services. Local agencies shall file the notice with the Ohio personal information control board. A supplemental or amended notice may be filed at any time after the orginal notice is filed.

(B) Every state or local agency that plans to establish a new personal information system on or after January 1, 1977, and every state or local agency that plans to substantially enlarge an existing personal information system on or after January 1, 1977, shall file notice of such plans. State agencies shall file the notice with the director of administrative services. Local agencies shall file the notice with the Ohio personal information control board.

(C) The notice required by divisions (A) and (B) of this section shall include the following information:

(1) The name of the system;

(2) The nature and purpose of the system;

(3) The name, title, telephone number, and address of the individual directly responsible for the system;

(4) A description of the types of uses made or to be made of personal information maintained in the system, and the types of agencies, individuals, or organizations that may use the information;

(5) The approximate number of persons that are the subject of personal information maintained in the system and the approximate number of separate subject headings under which the personal information about the persons is maintained in the system.

HISTORY: 136 v S 99. Eff 1-1-77.

The effective date of S 99 is set by section 2 of the act.

Cross-References to Related Sections

See RC §§ 1347.04, 1347.07, 1347.10 which refer to this section.

§ 1347.04 [Exemptions.]

(A) Any state or local agency or part of an agency that performs as its principal function any activity relating to the enforcement of the criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, the criminal courts, prosecutors, or any agency that is a correction, probation, par-

don, or parole authority is exempt from the provisions of this chapter except from the provisions of section 1347.03 of the Revised Code.

(B) The provisions of Chapter 1347. of the Revised Code do not apply to any personal information that is made confidential by statute or the disclosure of which is prohibited by statute.

(C) After the intial filing of notice required by section 1347.03 of the Revised Code, the department of administrative services and the Ohio personal information control board may by rule adopted pursuant to Chapter 119. of the Revised Code exempt any personal information system from the provisions of Chapter 1347. of the Revised Code for a period of five years, if such system maintains a small amount of personal information of such a nature that personal privacy would not be endangered if the disclosure or use of that information was not regulated or controlled by the provisions of Chapter 1347. of the Revised Code.

HISTORY: 136 v S 99. Eff 1-1-77.

The effective date of S 99 is set by section 2 of the act.

§ 1347.05 [Duties of state and local agencies.]

Every state or local agency that maintains a personal information system shall:

(A) Appoint one individual to be directly responsible for the system;

(B) Adopt and implement rules that provide for the operation of the system in accordance with the provisions of this chapter;

(C) Inform each of its employees having any responsibility in the operation or maintenance of the system, or for the use of personal information maintained in the system, of the provisions of this chapter and of all rules adopted in accordance with this section;

(D) Specify disciplinary measures to be applied to any employee who initiates or otherwise contributes to any disciplinary or other punitive action against any individual who brings to the attention of appropriate authorities, the press, or any member of the public, evidence of unauthorized use of information contained in the system;

(E) Inform a person asked to supply personal information for a system whether the person is legally required, or may refuse to supply the information;

(F) Maintain personal information in the system with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination made with respect to the person on the basis of the information;

(G) Take reasonable precautions to protect personal information in the system from any anticipated threat or hazard to the security of the system;

(H) Eliminate personal information from the system when the information is no longer timely.

(I) Collect only personal information that is necessary and relevant to the functions that the agency is required to perform by statute, ordinance, code, or rule.

HISTORY: 136 v S 99. Eff 1-1-77.

The effective date of S 99 is set by section 2 of the act.

Cross-References to Related Sections

Penalty, RC § 1347.99.

See RC § 1347.09 which refers to this section.

§ 1347.06 [Rules.]

The director of administrative services shall adopt rules applicable to state agencies, and the Ohio personal information control board shall adopt rules applicable to local agencies. The rules shall be adopted, amended, and rescinded pursuant to Chapter 119. of the Revised Code and shall:

(A) Provide standards for the interconnection or combination of personal information systems maintained by more than one agency. The rules shall be designed to protect individual privacy by preventing an agency from obtaining personal information records that are placed in the interconnected or combined system by another agency and to assure that the interconnection or combination of the systems will contribute to the efficiency of the agencies involved in implementing programs that are authorized by law. The rules shall also provide for a method by which a person can be informed of or trace the personal information interconnected or combined with that of any other system. The rules adopted pursuant to this division shall not restrict or limit the provisions relating to the disclosure of personal information contained in section 1347.07 of the Revised Code.

(B) Authorize types of disclosures or uses of personal information by agencies in instances where new programs are developed, the health, safety, or welfare of the public is involved, or for any other public purpose that the director or board determines to be consistent with the intent and purpose of Chapter 1347. of the Revised Code;

(C) Provide standards for maintaining the security of personal information systems, and that authorize access by a person to personal information in instances beyond that provided for by division (D) of section 1347.08 of the Revised Code if the protection of personal privacy makes the access necessary;

(D) Provide standards for the collection of

personal information by agencies to insure that the agencies collect only personal information that is necessary and relevant to the functions that the agency is required to perform by statute, ordinance, code, or rule.

HISTORY: 136 v S 99. Eff 1-1-77.

The effective date of S 99 is set by section 2 of the act.

Cross-References to Related Sections

See RC §§ 1347.07, 1347.08 which refer to this section.

§ 1347.07 [Disclosure of personal information; limitations.]

(A) No state or local agency shall disclose any personal information to another state or local agency, to a federal agency, or to any person, or use the information to determine individual benefits, eligibility, privileges, or rights, without the prior consent of the person who is the subject of the information, unless:

(1) The disclosure or use of the personal information is consistent with the stated purposes of the system and the stated types of uses of the information as described in the notice filed with the department of administrative services or the Ohio personal information control board pursuant to section 1347.03 of the Revised Code;

(2) The disclosure or use of the personal information is authorized by rules adopted by the department of administrative services or the Ohio personal information control board pursuant to section 1347.06 of the Revised Code or is otherwise required or authorized by federal law or state statutes;

(3) The disclosure or use of the personal information is a routine use of information contained in an agency personnel file;

(4) The disclosure is made pursuant to a written request, identifying the person making the request, and the information disclosed indicates whether a person named in the request is employed by the agency or licensed by the agency, or both.

(B) Every agency that maintains personal information shall make a reasonable effort to serve notice on a person when any personal information on the person is made available to any person under compulsory legal process.

(C) Any information that is obtained in violation of this section shall be suppressed by the court upon the motion of the defendant in any criminal action.

HISTORY: 136 v S 99. Eff 1-1-77.

The effective date of S 99 is set by section 2 of the act.

Cross-References to Related Sections

See RC § 1347.06 which refers to this section.

§ 1347.08 [Inspection of personal information maintained.]

(A) Every state or local agency that maintains a personal information system, upon the request and the proper identification of any person, shall:

(1) Inform the person of the existence of any personal information in the system of which he is the subject;

(2) Permit the person, or an attorney who presents a signed written authorization made by the person to inspect all personal information in the system of which he is the subject;

(3) Inform the person about the types of uses made of any such personal information, including the identity of any users usually granted access to the system.

(B) Any person who wishes to exercise a right provided for by this section may be accompanied by another individual of his choice.

(C) If a person requests access to medical, psychiatric, or psychological information, an agency shall disclose the information only to the person's personal physician, psychiatrist, or psychologist, or to an attorney who presents a signed written authorization made by the person, and not to the person himself.

(D) A person may request to inspect any personal information maintained by an agency only once in every calendar year, unless rules of the department of administrative services or the Ohio personal information control board adopted pursuant to section 1347.06 of the Revised Code permit more frequent inspection.

(E) Each agency shall establish reasonable fees to be charged a person who requests to inspect personal information maintained by the agency.

HISTORY: 136 v S 99. Eff 1-1-77.

The effective date of S 99 is set by section 2 of the act.

Cross-References to Related Sections

Penalty, RC § 1347.99.

See RC § 1347.06 which refers to this section.

§ 1347.09 [Disputed information; duties of agency.]

(A) (1) If any person disputes the accuracy, relevance, timeliness, or completeness of the personal information pertaining to him that is maintained by any state or local agency, he may request the agency to investigate the current status of the information. The agency shall, within a reasonable time after receiving the request from the disputant, make a reasonable investigation to determine whether the disputed information complies wih division (F) of section

1347.05 of the Revised Code and shall notify the disputant of the results of the investigation and of the action that the agency plans to take with respect to the disputed information. The agency shall delete any information that it cannot verify or that it finds to be inaccurate.

(2) If after such determination, the disputant is not satisfied, the agency shall do either of the following:

(a) Permit the disputant to include within the system a brief statement of his position on the disputed information. The agency may limit the statement to not more than one hundred words if the agency assists the disputant to write a clear summary of the dispute.

(b) Permit the disputant to include within the system a notation that the disputant protests that the information is inaccurate, irrelevant, outdated, or incomplete. The agency shall maintain a copy of the disputant's statement of the dispute. The agency may limit the statement to not more than one hundred words if the agency assists the disputant to write a clear summary of the dispute.

(3) The agency shall include the statement or notation in any subsequent transfer, report, or dissemination of the disputed information and may include with the statement or notation of the disputant a statement by the agency that it has reasonable grounds to believe that the dispute is frivolous or irrelevant and the reasons for its belief.

(B) The presence of contradictory information in the disputant's file does not alone constitute reasonable grounds to believe that the dispute is frivolous or irrelevant.

(C) Following any deletion of information that is found to be inaccurate or the accuracy of which can no longer be verified, or if a statement of dispute was filed by the disputant, the agency shall, at the written request of the disputant, furnish notification that the information has been deleted, or furnish a copy of the disputant's statement of the dispute, to any person specifically designated by the person. The agency shall clearly and conspicuously disclose to the disputant that he has the right to make such a request to the agency.

HISTORY: 136 v S 99. Eff 1-1-77.

The effective date of S 99 is set by section 2 of the act.

Cross-References to Related Sections

Penalty, RC § 1347.99.

§ 1347.10 [Liability for wrongful disclosure; limitation of action.]

(A) A person harmed by the use or disclosure of personal information relating to him that is maintained in a personal information system may recover damages in a civil action from any person who directly and proximately caused such harm by doing any of the following:

(1) Intentionally maintaining personal information that he knows, or has reason to know, is inaccurate, irrelevant, no longer timely, or incomplete and may result in such harm;

(2) Intentionally using or disclosing the personal information in a manner prohibited by law;

(3) Supplying personal information for storage in, or using or disclosing personal information maintained in, a personal information system, that he knows, or has reason to know, is false;

(4) Intentionally denying to the person the right to inspect and dispute the personal information at a time when inspection or correction might have prevented the harm.

An action under this division shall be brought within two years after the cause thereof accrued or within six months after the wrongdoing is discovered, whichever is later; provided that no action shall be brought later than six years after the cause accrued. The cause accrues at the time that the wrongdoing occurs.

(B) Any person or state or local agency that violates or proposes to violate any provision of Chapter 1347. of the Revised Code may be enjoined by any court of competent jurisdiction. The court may issue an order or make a judgment as may be necessary to prevent the use of any practice that violates Chapter 1347. of the Revised Code. An action for an injunction may be prosecuted by the person who is the subject of the violation, by the attorney general or by any prosecuting attorney.

(C) The department of administrative services or the Ohio personal information control board may commence an action against any person or agency that fails or refuses to file a notice as required in section 1347.03 of the Revised Code. The court may issue whatever order is necessary to compel a person or agency to comply with such section.

HISTORY: 136 v S 99. Eff 1-1-77.

The effective date of S 99 is set by section 2 of the act.

§ 1347.99 [Penalty.]

Any public official, public employee, or other person who maintains, a personal information system for a state or local agency, who purposely fails to comply with division (E), (F), (G), or (I) of section 1347.05, division (A), (B), or (C) of section 1347.08, or division (A) or (C) of section 1347.09 of the Revised Code, or with any regulation of the department of administrative services or the Ohio personal information control board relating to the enforcement and administration of those sections, is guilty of a misdemeanor of the fourth degree.

HISTORY: 136 v S 99. Eff 1-1-77.

The effective date of S 99 is set by section 2 of the act.

Penalty for misdemeanor, RC § 2929.21.

[§ 2951.04.1] § 2951.041 [Treatment in lieu of conviction.]

(A) If the court has reason to believe that an offender charged with a felony or misdemeanor is a drug dependent person or is in danger of becoming a drug dependent person, the court shall, prior to the entry of a plea, accept that offender's request for treatment in lieu of conviction. If the offender requests treatment in lieu of conviction, the court shall stay all criminal proceedings pending the outcome of the hearing to determine whether the offender is a person eligible for treatment in lieu of conviction. At the conclusion of the hearing, the court shall enter its findings and accept the offender's plea.

(B) The offender is eligible for treatment in lieu of conviction if the court finds that:

(1) The offender's drug dependence or danger of drug dependence was a factor leading to the criminal activity with which he is charged, and rehabilitation through treatment would substantially reduce the likelihood of additional criminal activity;

(2) The offender has been accepted into an appropriate drug treatment facility or program. An appropriate facility or program for rehabilitation or treatment includes a special facility established by the director of mental health and mental retardation pursuant to section 5122.041 [5122.04.1] of the Revised Code, a program licensed by the director pursuant to section 5122.50 of the Revised Code, a program certified by the director pursuant to division (C) of section 5122.51 of the Revised Code, a public or private hospital, the veterans administration or other agency of the federal government, or private care or treatment rendered by a physician or a psychologist licensed in the state;

(3) If the offender were convicted he would be eligible for probation under section 2951.02 of the Revised Code, except that a finding of any of the criteria listed in divisions (D) and (F) of that section shall cause the offender to be conclusively ineligible for treatment in lieu of conviction;

(4) The offender is not a "repeat offender" or "dangerous offender" as defined in section 2929.01 of the Revised Code;

(5) The offender is not charged with any offense defined in section 2925.02, 2925.03, or 2925.21 of the Revised Code.

Upon such a finding and where the offender enters a plea of guilty or no contest, the court may stay all criminal proceedings and order the offender to a period of rehabilitation. Where a plea of not guilty is entered, a trial shall precede further consideration of the offender's request for treatment in lieu of conviction.

(C) The offender and the prosecuting attorney shall be afforded the opportunity to present evidence to establish eligibility for treatment in lieu of conviction, and the prosecutor may make a recommendation to the court concerning whether or not the offender should receive treatment in lieu of conviction. Upon the request of the offender and to aid the offender in establishing his eligibility for treatment in lieu of conviction, the court may refer the offender for medical and psychiatric examination to the department of mental health and mental retardation or to a state facility designated by the department, to a psychiatric clinic approved by the department, or to a program or facility described in division (B) (2) of this section. However, the psychiatric portion of an examination pursuant to a referral under this division shall be performed only by a court appointed individual who has not previously treated the offender or a member of his immediate family.

(D) An offender found to be eligible for treatment in lieu of conviction and ordered to a period of rehabilitation shall be placed under the control and supervision of the county probation department or the adult parole authority as provided in Chapter 2951. of the Revised Code as if he were on probation. The court shall order a period of rehabilitation to continue for such period as the judge or magistrate determines which may be extended but the total period shall not exceed three years. The period of rehabilitation shall be conditioned upon the offender's voluntary entrance into an appropriate treatment facility or program, faithful submission to prescribed treatment, and upon such other conditions as the court orders.

(E) Treatment of a person ordered to a period of rehabilitation under this section may include hospitalization under close supervision or otherwise, release on an out-patient status under supervision, and such other treatment or after-care as the appropriate treatment facility or program considers necessary or desirable to rehabilitate such person. Persons released from hospitalization or treatment but still subject to the ordered term of rehabilitation may be rehospitalized or returned to treatment at any time it becomes necessary for their treatment and rehabilitation.

(F) If the treating facility or program reports to the probation officer that the offender has successfully completed treatment and is rehabilitated, the court may dismiss the charges pending against the offender. If the treating facility or program reports that the offender has successfully completed treatment and is rehabilitated or has obtained maximum benefits from the treat-

ment program, and that the offender completes the period of rehabilitation and other conditions ordered by the court, the court shall dismiss the charges pending against the offender. If the treating facility or program reports that the offender has failed treatment, or if the offender does not satisfactorily complete the period of rehabilitation or the other conditions ordered by the court, the court may take such actions as it deems appropriate. Upon violation of the conditions of the period of rehabilitation, the court may enter an adjudication of guilt and proceed as otherwise provided. If at any time after treatment has commenced, the treating facility or program reports that the offender fails to submit to or follow the prescribed treatment, the offender shall be arrested as provided in section 2951.08 of the Revised Code and removed from the treatment program or facility. Such failure and removal shall be considered by the court as a violation of the conditions of the period of rehabilitation and dealt with according to law as in cases of probation violation. At any time and for any appropriate reason, the offender, his probation officer, the authority or department that has the duty to control and supervise the offender as provided for in section 2951.05 of the Revised Code, or the treating facility or program may petition the court to reconsider, suspend, or modify its order for treatment concerning that person.

(G) The treating facility or program shall report to the authority or department who has the duty to control and supervise the offender as provided for in section 2951.05 of the Revised Code, at any periodic reporting period the court requires and whenever the offender is changed from an in-patient to an out-patient, is transferred to another treatment facility or program, fails to submit to or follow the prescribed treatment, becomes a discipline problem, is rehabilitated, or obtains the maximum benefit of treatment.

(H) If, on the offender's motion, the court finds that the offender has successfully completed the period of rehabilitation ordered by the court, is rehabilitated, is no longer drug dependent or in danger of becoming drug dependent, and has completed all other conditions, the court shall dismiss the proceeding against him. Successful completion of a period of rehabilitation under this section shall be without adjudication of guilt and is not a criminal conviction for purposes of disqualifications or disabilities imposed by law and upon conviction of a crime, and the court may order the expungement of records in the manner provided in sections 2953.31 to 2953.36 of the Revised Code.

(I) An order denying treatment in lieu of conviction under this section shall not be construed to prevent conditional probation under section 2951.04 of the Revised Code.

(J) Any person ordered to treatment by the terms of this section shall be liable for expenses incurred during the course of treatment and if he is treated in a benevolent institution under the jurisdiction of the department of mental health and mental retardation, he is subject to the provisions of Chapter 5121. of the Revised Code.

(K) An offender charged with a drug abuse offense, other than a minor misdemeanor involving marihuana and otherwise eligible for treatment in lieu of conviction may request and may be ordered to a period of rehabilitation even though the findings required by divisions (B) (1) and (2) of this section are not made. An order to rehabilitation under this division shall be subject to such conditions as the court requires but shall not be conditioned upon entry into an appropriate treatment program or facility.

HISTORY: 136 v H 300. Eff 7-1-76.

§ 2953.31 [Definition.]

As used in sections 2953.31 to 2953.36 of the Revised Code, "first offender" means anyone who has once been convicted of an offense in this state or any other jurisdiction. When two or more convictions result from or are connected with the same act, or result from offenses committed at the same time, they shall be counted as one conviction.

HISTORY: 135 v S 5. Eff 1-1-74.

The provisions of § 2 are as follows:

SECTION 2. Section 1 of this act shall take effect on January 1, 1974, with the following exception: That portion of Section 1 which affects first offenders convicted of a misdemeanor shall take effect on July 1, 1975.

Referendum deadline is 11-21-73.

§ 2953.32 [Expungement of record of conviction.]

(A) A first offender may apply to the sentencing court if convicted in the state of Ohio or to a court of common pleas if convicted in another jurisdiction for the expungement of the record of his conviction, at the expiration of three years if convicted of a felony, or at the expiration of one year if convicted of a misdemeanor, after his final discharge.

(B) Upon the filing of such application, the court shall set a date for hearing and shall notify the prosecuting attorney of the hearing on the application. The court shall direct its regular probation officer, a state probation officer, or the department of probation of the county where the applicant resides to make such inquiries and written reports as the court requires concerning the applicant.

(C) If the court finds that the applicant is a first offender, that there is no criminal proceeding against him, that his rehabilitation has

been attained to the satisfaction of the court, and that the expungement of the record of his conviction is consistent with the public interest, the court shall order all official records pertaining to such case sealed and all index references deleted. The proceedings in such case shall be deemed not to have occurred and the conviction of the person subject thereof shall be expunged, except that upon conviction of a subsequent offense, the sealed record of prior conviction may be considered by the court in determining the sentence or other appropriate disposition, including the relief provided for in sections 2953.31 to 2953.33 of the Revised Code. Upon the filing of an application under this section, the applicant shall, unless he is indigent, pay a fee of fifty dollars. The court shall pay thirty dollars of such fee into the state treasury; and twenty dollars into the county general revenue fund if the expunged conviction was under a state statute, or into the general revenue fund of the municipal corporation involved if the expunged conviction was under a municipal ordinance.

(D) Inspection of the records included in the order may be made only by any law enforcement officer, prosecuting attorney, city solicitor, or their assistants, for purposes of determining whether the nature and character of the offense with which a person is to be charged would be affected by virtue of such persons having previously been convicted of a crime or upon application by the person who is the subject of the records and only to such persons named in his application. When the nature and character of the offense with which a person is to be charged would be affected by such information, it may be used for the purpose of charging the person with an offense.

(E) In any criminal proceeding, proof of any otherwise admissible prior conviction may be introduced and proved, notwithstanding the fact that for any such prior conviction an order of expungement was previously issued pursuant to sections 2953.31 to 2953.36 of the Revised Code.

HISTORY: 135 v S 5. Eff 1-1-74.

See effective date provision following § 2953.31.

Referendum deadline is 11-21-73.

§ 2953.33 [All rights and privileges restored.]

(A) An order of expungement of the record of conviction restores the person subject thereof to all rights and privileges not otherwise restored by termination of sentence or probation or by final release on parole.

(B) In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, except as provided in division (E) of section 2953.32 of the Revised Code, a person may be questioned only with respect to convictions not expunged, unless the question bears a direct and substantial relationship to the position for which the person is being considered.

HISTORY: 135 v S 5. Eff 1-1-74.

See effective date provision following § 2953.31.

Referendum deadline is 11-21-73.

§ 2953.34 [First offender may still take appeal or seek relief.]

Nothing in sections 2953.31 to 2953.33 of the Revised Code precludes a first offender from taking an appeal or seeking any relief from his conviction or from relying on it in lieu of any subsequent prosecution for the same offense.

HISTORY: 135 v S 5. Eff 1-1-74.

See effective date provision following § 2953.31.

Referendum deadline is 11-21-73.

§ 2953.35 [Divulging confidential information.]

Except as authorized by divisions (D) and (E) of section 2953.32 of the Revised Code, any officer or employee of the state, or a political subdivision thereof, who releases or otherwise disseminates or makes available for any purpose involving employment, bonding, or licensing in connection with any business, trade, or profession to any person, or to any department, agency, or other instrumentality of the state government, or any political subdivision thereof, any information or other data concerning any arrest, indictment, trial, hearing, conviction, or correctional supervision the records with respect to which he had knowledge of were expunged by an existing order issued pursuant to sections 2953.31 to 2953.36 of the Revised Code, is guilty of divulging confidential information, a misdemeanor of the fourth degree.

HISTORY: 136 v H 1. Eff 6-13-75.

§ 2953.36 [Application of preceding sections.]

Sections 2953.31 to 2953.35 of the Revised Code do not apply to convictions when the offender is not eligible for probation, or convictions under Chapter 4507., 4511., or 4549. of the Revised Code.

HISTORY: 135 v S 5. Eff 1-1-74.

§ 5122.53 [Patient's records confidential; disclosure.]

(A) Records or information, other than court journal entries or court docket entries, pertaining to the identity, diagnosis, or treatment of any patient which are maintained in connection with the performance of any drug treatment program licensed by, or certified by, the director of mental health and mental retardation, under sections 5122.50 and 5122.51 of the Revised Code, shall be kept confidential, may be disclosed only for the purposes and under the circumstances expressly authorized under this section, and may not otherwise be divulged in any civil, criminal, administrative, or legislative proceeding.

(B) When the patient, with respect to whom any record or information referred to in division (A) of this section is maintained, gives his consent in the form of a written release signed by the patient, the content of such record or such information may be disclosed if said written release:

(1) Specifically identifies the person, official, or entity to whom the information is to be provided;

(2) Describes with reasonable specificity the record, records, or information to be disclosed; and

(3) Describes with reasonable specificity the purposes of the disclosure and the intended use of the disclosed information.

(C) A patient who is subject to parole, probation, or who is ordered to rehabilitation in lieu of conviction, and who has agreed to participate in a drug treatment or rehabilitation program as a condition of parole, probation, or order to rehabilitation, shall be deemed to have consented to the release of records and information relating to the progress of treatment, frequency of treatment, adherence to treatment requirements, and probable outcome of treatment. Release of information and records under this division shall be limited to the court or governmental personnel having the responsibility for supervising his probation, parole, or order to rehabilitation. A patient, described in this division, who refuses to allow disclosure may be considered in violation of the conditions of his parole, probation, or order to rehabilitation.

(D) Disclosure of a patient's record may be made without his consent to qualified personnel for the purpose of conducting scientific research, management, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose a patient's identity in any manner.

(E) Upon the request of a prosecuting attorney or the director of mental health and mental retardation, a court of competent jurisdiction may order the disclosure of records or information referred to in division (A) of this section if the court has reason to believe that a treatment program or facility is being operated or used in a manner contrary to law. The use of any information or record so disclosed shall be limited to the prosecution of persons who are or may be charged with any offense related to the illegal operation or use of the drug treatment program or facility, or to the decision to withdraw the authority of a drug treatment program or facility to continue operation. For purposes of this division the court shall:

(1) Limit disclosure to those parts of patient's record deemed essential to fulfill the objective for which the order was granted;

(2) Require, where appropriate, that all information be disclosed in chambers;

(3) Include any other appropriate measures to keep disclosure to a minimum, consistent with the protection of the patients, the physician-patient relationship, and the administration of the drug treatment and rehabilitation program.

HISTORY: 136 v H 300. Eff 7-1-76.

The effective date of HB 300 is set by § 4 of the act.

See provisions, § 3 of HB 300 (136 v —) following RC § 5122.50.

Cross-References to Related Sections

Penalty, RC § 5122.99(D).

6 § 208. Divulging information prohibited, except declared public records—Information permitted in certain cases—Records subject to subpoena but not otherwise public

The following records in the Banking Department are designated as public records:

(1) all applications for state bank charters and supporting information with the exception of personal financial records of individual applicants,

(2) all records introduced at public hearings on bank charter applications,

(3) information disclosing the failure of a state bank and the reasons therefor,

(4) reports of completed investigations which uncover a shortage of funds in a bank, after the reporting of the shortage to proper authorities by the Commissioner,

(5) names of all bank stockholders and officers filed in the office of the Secretary of State, and

(6) regular financial call reports issued at the time of state bank calls.

All other records in the Banking Department shall be confidential and not subject to public inspection; provided, however, that the Board, Commissioner, or Deputy Commissioner may divulge such confidential information with the written approval of the Commissioner, and that such records may be available in any proceeding, pending in any court, board or commission of the state, either by deposition or by subpoena duces tecum, as may be authorized by the laws of this state. Laws 1965, c. 161, § 208.

§ 24. Records open for public inspection

It is hereby made the duty of every public official of the State of Oklahoma, and of its sub-divisions, who are required by law to keep public records pertaining to their said offices, to keep the same open for public inspection for proper purposes, at proper times and in proper manner, to the citizens and taxpayers of this State, and its sub-divisions, during all business hours of the day; provided, however, the provisions of this act shall not apply to Income Tax Returns filed with the Oklahoma Tax Commission, or other records required by law to be kept secret. Laws 1943, p. 126, § 1.

68 § 205 Records and files of Commission confidential and privileged—Exceptions

(a) The records and files of the Tax Commission concerning the administration of this article, or of any state tax law, shall be considered confidential and privileged, except as provided otherwise by law and neither the Tax Commission nor any employee engaged in the administration thereof or charged with the custody of any such records or files, nor any person who may have secured information therefrom, shall divulge or disclose any information obtained from the said records or files or from any examination or inspection of the premises or property of any person.

68 § 205

(b) Neither the Tax Commission nor any employee engaged in such administration or charged with the custody of any such records or files shall be required by any court of this state to produce any of them for the inspection of any person or for use in any action or proceeding except when the records or files or the facts shown thereby are directly involved in an action or proceeding under the provisions of this article, or of the state tax law affected, or when the determination of the action or proceeding will affect the validity or the amount of the claim of the state under any state tax law, or when the information contained therein constitutes evidence of the violation of this article, or any state tax law. Nothing herein contained shall be construed to prevent:

(1) The delivery to a taxpayer or his duly authorized representative, of a copy of any report or any other paper filed by him pursuant to the provisions of this article, or of any state tax law;

(2) The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

(3) The examination of such records and files by the State Examiner and Inspector, or his duly authorized agents;

(4) The disclosing of information or evidence to the Attorney General or any district attorney when such information or evidence is to be used by such officials to prosecute violations of the criminal provisions of any state tax law or of this article. Such information disclosed to the Attorney General or any district attorney shall be kept confidential by them and not be disclosed except when presented to a court in a prosecution for violation of the tax laws of the State of Oklahoma and a violation by them by otherwise releasing the information shall be a felony;

(5) The use by any division of the Tax Commission of any information or evidence in the possession of or contained in any report or return filed with any other division of the Tax Commission;

(6) The furnishing, at the discretion of the Tax Commission, of any information disclosed by said records or files to any official person or body of any other state or of the United States, who shall be concerned with the administration of any similar tax in that state or the United States; or

(7) Notwithstanding the provisions of this section of the Uniform Tax Procedure Act, as same now exists or as same may hereafter be amended, making the records and files of the Oklahoma Tax Commission relating to all state tax laws privileged and confidential, the Oklahoma Tax Commission shall as soon as practicable in each year cause to be prepared and made available to the public inspection in the office of the Oklahoma Tax Commission in Oklahoma City, Oklahoma, in such manner as it may determine, lists containing the name and post office address of each person, whether individual, corporate or otherwise, making and filing an income tax return with the Oklahoma Tax Commission.

It is specifically provided that no liability whatsoever, civil or criminal, shall attach to any member of the Oklahoma Tax Commission, or any employee thereof, for any error or omission of any name or address, in the preparation and publication of said list.

It is further provided that the provisions of this act shall be strictly interpreted and shall not be construed as permitting the disclosure of any other information contained in the records and files of the Tax Commission relating to income tax or to any other taxes.

(c) Any violation of the provisions of this section shall constitute a misdemeanor, and shall be punishable by a fine not exceeding One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term not exceeding one (1) year, or by both such fine and imprisonment; and the offender shall be removed or dismissed from office.

(d) Offenses defined by Section 919 of Title 68, Oklahoma Statutes, shall be reported to the appropriate district attorney of this state by the Oklahoma Tax Commission as soon as said offenses are discovered by the Commission or its agents or employees. Any other provision of law to the contrary notwithstanding, the Commission shall make available to the appropriate district attorney or to the authorized agent of said district attorney its records and files pertinent to such prosecutions, and such records and files shall be fully admissible in evidence for the purpose of such prosecutions.

Amended by Laws 1976, c. 123, § 1, emerg. eff. May 18, 1976.

11 § 794. Execution of sentence—Modification—Suspension—Probation

(a) All sentences of imprisonment shall be executed by the chief of police of the city, and any person convicted of a violation of any ordinance of the city and sentenced to imprisonment shall be confined in the city jail, municipal farm or municipal workhouse, in the discretion of the court, for the time specified in the sentence. All persons who shall be convicted in said court of violation of any ordinance of the city and sentenced to pay a fine and costs, who shall refuse to pay such fine or costs, shall be imprisoned in the jail of the city for one (1) day for each Two Dollars ($2.00) of the fine and costs assessed.

(b) The judge of the municipal criminal court of record imposing a judgment and sentence, at his discretion, is empowered to modify, reduce, or suspend or defer the imposition of such sentence or any part thereof and to authorize probation for a period not to exceed six (6) months from the date of sentence, under such terms or conditions as the judge may specify. Upon completion of the probation term, the defendant shall be discharged without a court judgment of guilt, and the verdict, judgment of guilty or plea of guilty shall be expunged from the record and said charge be dismissed with prejudice to any further action. Upon a finding of the court that the conditions of probation have been violated, the municipal judge may enter a judgment of guilty.

(c) The judge of the municipal court of record may continue or delay imposing a judgment and sentence for a period of time not to exceed six (6) months from the date of sentence. At the expiration of such period of time the judge may allow the city attorney to amend the charge to a lesser offense.

Amended by Laws 1963, c. 173, § 7, eff. Jan. 13, 1969; Laws 1970, c. 174, § 13, eff. July 1, 1970; Laws 1976, c. 287, § 1, emerg. eff. June 17, 1976.

21 § 461 Larceny or destruction of records by clerk or officer

Every clerk, register or other officer having the custody of any record, maps or book, or of any paper or proceeding of any court of justice, filed or deposited in any public office, who is guilty of stealing, wilfully destroying, mutilating, defacing, altering or falsifying or unlawfully removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, is punishable by imprisonment in the penitentiary not exceeding five years, and in addition thereto forfeits his office. R.L. 1910, § 2207.

§ 462. Larceny or destruction of records by other persons

Every person not an officer such as is mentioned in the last section,[1] who is guilty of any of the acts specified in that section, is punishable by imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. R.L.1910, § 2208.

§ 463. Offering forged or false instruments for record

Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this State, which instrument, if genuine, might be filed or registered or recorded under any law of this State or of the United States, is guilty of felony. R.L.1910, § 2209.

21 § 531 Injury to records—Embezzlement by officer

Every sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer who either:

1. Mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office, or,

2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property entrusted to him in virtue of his office, is guilty of felony. R.L.1910, § 2243.

22 § 385. Presentment and filing of indictment—Prohibition against disclosure

An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk, and remain in his office as a public record, and except as provided by law, it may not be inspected or its contents revealed, until the defendant has been arrested.

R.L.1910, § 5734; Laws 1961, p. 237, § 1, eff. Oct. 27, 1961.

22 § 982 Presentence investigation

Whenever a person is convicted of a felony except when the death sentence is imposed, the court shall, before imposing sentence to commit any felon to incarceration by the Department of Corrections, order a presentence investigation to be made by the Division of Probation and Parole of the Department. The Division shall thereupon inquire into the circumstances of the offense, and the criminal record, social history and present condition of the convicted person; and shall make a report of such investigation to the court, including a recommendation as to appropriate sentence, and specifically a recommendation for or against probation. Such reports must be presented to the judge so requesting, within a reasonable time, and upon the failure to so present the same, the judge may proceed with sentencing. Whenever, in the opinon of the court or the Division, it is desirable, the investigation shall include a physical and mental examination of the convicted person. The reports so received shall not be referred to, or be considered, in any appeal proceedings. Before imposing sentence, the court shall advise the defendant or his counsel and the district attorney of the factual contents and the conclusions of any presentence investigation or psychiatric examination and afford fair opportunity, if the defendant so requests, to controvert them. If either the defendant or the district attorney desires, such hearing shall be ordered by the court providing either party an opportunity to offer evidence proving or disproving any finding contained in such report, which shall be a hearing in mitigation or aggravation of punishment.

If the district attorney and the defendant desire to waive such presentence investigation and report, both shall execute a suitable waiver subject to approval of the court, whereupon the judge shall proceed with the sentencing.

Laws 1967, c. 277, § 1, emerg. eff. May 8, 1967. Amended by Laws 1975, c. 369, § 1, emerg. eff. June 18, 1975.

22 § 991c Deferred judgment procedure

Upon a verdict or plea of guilty, but before a judgment of guilt, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation under the supervision of the State Department of Corrections upon the conditions of probation prescribed by the court. Such conditions may include restitution when applicable, appropriate and administered in accordance with the provisions pertaining to restitution set forth above. Upon completion of the probation term, which probation term under this procedure shall not exceed two (2) years, the defendant shall be discharged without a court judgment of guilt, and the verdict or plea of guilty shall be expunged from the record and said charge shall be dismissed with prejudice to any further action. Upon violation of the conditions of probation, the court may enter a judgment of guilt and proceed as provided in Section 1 of this act. The deferred judgment procedure described in this section shall only apply to defendants not having been previously convicted of a felony.
Laws 1970, c. 312, § 2. Amended by Laws 1976, c. 160, § 3, eff. Oct. 1, 1976.

47 § 2—111. Records of department

(a) All records of the Department, other than those declared by law to be confidential for the use of the Department, shall be open to public inspection during office hours.

(b) The Commissioner may destroy any records of the Department which have been maintained on file for five years which he may deem obsolete and of no further service in carrying out the powers and duties of the Department. Laws 1961, p. 327, § 2–111.

§ 2—122. Peace Officers Training Fund

There is hereby created in the State Treasury a revolving fund to be designated as the "Peace Officers Training Fund" which shall be a continuing fund not subject to fiscal year limitations. Expenditures from such fund may be used for the acquisition, operation, maintenance, repair and replacement of supplies and equipment and other necessary program costs for the operation of the Robert R. Lester Law Enforcement Training Academy. Receipts to said fund shall be from gifts, federal agency sources, tuition and fees for room and meals from users of the academy facilities. All amounts collected shall be deposited in the State Treasury to the credit of the "Peace Officers Training Fund".
Added by Laws 1972, c. 84, § 2, emerg. eff. March 28, 1972.

§ 2—124. Law Enforcement Telecommunication Systems Division—Creation

There is hereby created within the Department of Public Safety an Oklahoma Law Enforcement Telecommunication Systems Division. The Division shall operate and maintain an on-line, realtime computer system and a statewide law enforcement data communication network. The Division shall utilize and distribute information on vehicle registration, driver records, criminals and the commission of crime. The Division shall be responsible for the coordination of user agencies with the National Crime Information Center in Washington, D.C., and the National Law Enforcement Telecommunication System, or its successor. The Division shall be the central access and control point for Oklahoma's input, retrieval and exchange of law enforcement information in the National Crime Information Center and the National Law Enforcement Telecommunication System.

The Division shall provide user agencies a data communication network, in order to exchange and distribute law enforcement data rapidly, and training in the use of the Oklahoma Law Enforcement Telecommunication Systems.
Added by Laws 1975, c. 324, § 1, emerg. eff. June 12, 1975.

§ 2—126. Rules and regulations

The Commissioner of Public Safety may promulgate rules and regulations as may be necessary to carry out the provisions of this act.
Added by Laws 1975, c. 324, § 3, emerg. eff. June 12, 1975.

§ 2—127. Advisory Committee

There is hereby created an Oklahoma Law Enforcement Telecommunication Systems Advisory Committee. The Committee shall be composed of the Attorney General, Chairman of the Oklahoma Tax Commission, Director of the Southwest Center for Law Enforcement Education, Director of the Oklahoma State Bureau of Investigation, the Adjutant General of Oklahoma, the Chairman of the State Board of Public Affairs, the Chief Justice of the Oklahoma Supreme Court, the Director of the Department of Corrections and the Executive Director of the Oklahoma Sheriffs and Peace Officers Association.

The Committee shall make recommendations to the Commissioners of Public Safety on:

1. The criteria used for the selection of user agencies;

2. Cost sharing relative to the development and maintenance of the computer system and data communication network;

3. Goals and objectives for the computer system and data communication network;

4. Policies covering coordination, cooperation, joint efforts and working relationships with user agencies; and

5. Rules and regulations.

Added by Laws 1975, c. 324, § 4, emerg. eff. June 12, 1975.

§ 2—129. Protection of information

All Department of Public Safety employees charged with the custody and dissemination of confidential and privileged information in the administration of the Systems shall neither divulge nor disclose any information except to federal, state, county or city law enforcement agencies. Any offender shall be subject to dismissal from state employment.
Added by Laws 1975, c. 324, § 6, emerg. eff. June 12, 1975.

57 § 514 Division of Community Services—Duties

The Division of Community Services shall:

(a) Provide clerical services for, and keep and preserve the files and records of, the Pardon and Parole Board;

(b) Make investigations and inquiries as to prisoners at the institutions who are to be, or who might be, considered for parole or other clemency;

(c) Assist prisoners who are to be, or who might be, considered for parole or discharge in obtaining suitable employment in the event of parole or discharge;

(d) Report to the Pardon and Parole Board, for recommendation to the Governor, violations of terms and conditions of paroles;

(e) Upon request of the Governor, make investigations and inquiries as to persons who are to be, or who might be, considered for reprieves or leaves of absence;

(f) Report to the Pardon and Parole Board, for recommendation to the Governor, as to whether a parolee is entitled to a pardon, when the terms and conditions of his parole have been completed;

(g) Make presentence investigations for, and make reports thereof to, trial judges in criminal cases before sentences are pronounced; and supervise persons undergoing suspended sentences, or on probation or parole;

(h) Develop and operate, under the supervision and control of the Director and subject to the policies and guidelines of the Board, work-release centers, community treatment facilities or prerelease programs at appropriate sites throughout the state.
Amended by Laws 1975, c. 366, § 3, eff. Oct. 1, 1975.

63 § 2-410. Conditional discharge for possession as first offense

Whenever any person who has not previously been convicted of any offense under this act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled dangerous substance under Section 2–402, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require including the requirement that such person cooperate in a treatment and rehabilitation program of a state-supported or state-approved facility, if available. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

Any expunged arrest or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire or any other public or private purpose; provided, that, any such plea of guilty or finding of guilt shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant.

Laws 1971, c. 119, § 2–410.

67 § 162. Confidential records

When a State record is required by law to be treated in a confidential manner and is an essential State record, the Records Preservation Officer, and his staff, in effectuating the purposes of the Act with respect to such State record, shall protect its confidential nature. Laws 1961, p. 503, § 12.

CHAPTER 8.—REPRODUCTION OF PUBLIC RECORDS [NEW]

Sec.

§ 301. Photographing, microphotographing or filming of records—Standards—Preservation of original negatives

Any public officer of the state or any county, public trust, authority or agency, city, municipality, district or legal subdivision thereof, may cause any or all records, papers or documents kept by him to be photographed, microphotographed or reproduced on film. The custodian of the records may permit any record to be removed from his office for the purpose of photographic filming, and his responsibility for their care and return shall continue during the times of their removal from the area controlled by the custodian of the records during photographic processes. The custodian of the records shall, before delivering any records for photographing or microphotographing make a complete catalogue list of the records to be filmed and retain the same until the records are returned. He may require a bond, and shall require written receipt identifying each record removed from his custody. Such photographic film shall comply with the minimum standards of quality approved for permanent photographic records by the National Bureau of Standards and the device used to reproduce such records on such film shall accurately reproduce the original thereof in all details. Such photographs, microphotographs or photographic film shall be deemed to be original records for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification, or certified copy thereof, for all purposes recited herein, shall be deemed to be a transcript, exemplification, or certified copy of the original.

The original photographs, microphotographs or film shall be stored in a maximum security vault and only be removed therefrom for the purpose of making copies thereof as the custodian of the records may require or for replacement by a duplicate at not longer than twenty-year intervals as to all such records required to be kept for more than twenty (20) years. At the election of the custodian of the records, however, the master negative may, immediately upon being made, be deposited with the Division of Archives and Records of the Oklahoma Department of Libraries which shall retain it in a maximum security vault and furnish such copies thereof as may be required for the purposes of the custodian of the records. The cost of any photographic, microphotographic, or filming service requested by and furnished to a state agency or subdivision of government shall be paid to the Department of Libraries rendered on the basis of fee schedules established by the Archives and Records Commission.

A copy of such photographs, microphotographs or reproductions on film properly certified and catalogued shall be placed in conveniently accessible files and provisions made for preserving, examining and using the same, including reproduction of same. There shall be available for use by the public at least two devices for viewing, and at least one of said devices shall provide for reproducing the photographic records. Such copies shall be certified by their custodian as true copies of the originals, and the copies so certified shall have the same force and effect as the originals. A statement in writing describing the record and certifying it to be a true copy, and attached securely to the reproduction, will be deemed a sufficient certification. Any viewing devices in use at the time of the passage of this act may continue to be used, although such device does not provide a reproducing system.

Laws 1968, c. 116, § 1, emerg. eff. April 1, 1968. Amended by Laws 1972, c. 209, § 1, emerg. eff. March 31, 1972.

§ 303. Court or judicial records

This Act shall not apply to any court or judicial records.

Laws 1968, c. 116, § 3, emerg. eff. April 1, 1968.

74 § 8.1 Oklahoma Crime Commission—Creation

There is hereby established an agency of the state government to be named the Oklahoma Crime Commission.
Added by Laws 1975, c. 323, § 4, operative July 1, 1975.

§ 8.2 Purpose

The Legislature hereby declares that the purpose of this act is to:

1. Evaluate state and local programs associated with the prevention of crime, law enforcement and the administration of the criminal and correctional process;

2. Encourage the preparation and adoption of comprehensive plans for the improvement and coordination of all aspects of law enforcement and criminal and correctional process; and

3. Stimulate the research and development of new methods for the prevention and reduction of crime.
Added by Laws 1975, c. 323, § 5, operative July 1, 1975.

§ 8.3 Membership and organization

A. The Commission shall consist of forty (40) members who shall be appointed by the Governor and who shall serve at his pleasure. Members appointed to the Commission shall be appointed from the following agencies or groups:

1. State law enforcement and criminal justice agencies directly concerned with the prevention and control of juvenile delinquency;

2. Elected policy-making officials of political subdivisions of state government;

3. Law enforcement officials or administrators of political subdivisions of state government;

4. Representatives of the law enforcement and criminal justice functions of police, corrections, court and juvenile justice systems;

5. Representatives of governmental agencies maintaining programs to reduce and control crime, whether or not they are functioning primarily as law enforcement agencies;

6. Groups representing both urban and rural areas so that a reasonable geographical balance of membership may be maintained; and

7. Citizen, professional and community organizations, including organizations interested in the prevention of delinquency.

B. The Commission shall meet at the call of the chairman on the last working day preceding the 16th day of the months of March, June, September and December of each year. The chairman and vice chairman of the executive committee shall serve as chairman and vice chairman of the Commission. Eleven (11) members of the Commission shall constitute a quorum and a majority of a quorum present may act for the Commission.
Added by Laws 1975, c. 323, § 6, operative July 1, 1975.

§ 8.4 Standing committees

A. The Commission shall be divided into four standing committees which shall consist of ten (10) members each. The standing committees shall be:

1. The Police Committee.

2. The Corrections Committee.

3. The Court System Committee.

4. The Juvenile Justice Systems Committee.

B. The Governor shall designate which of the standing committees each Commission member shall serve on.

C. The Governor shall designate the chairman of each standing committee. The chairman of each committee shall be confirmed by the Senate. Should the Senate not act to confirm an appointee within thirty (30) days of his appointment or within thirty (30) days of the convening of the next legislative session, should he be appointed while the Legislature is not in session, such appointee shall be deemed confirmed.

D. The duties of each of the standing committees shall be those of the Commission except that the activities of the committees shall be restricted to their respective areas of interest. Each of the committees shall meet at the call of the standing committee chairman. Six members of each committee shall constitute a quorum and a majority of a quorum present may act for each committee.
Added by Laws 1975, c. 323, § 7, operative July 1, 1975.

§ 8.5 Executive committee

A. There shall be an executive committee of the Commission, appointed by the Governor, with the advice and consent of the Senate, which shall be composed of six (6) members who shall serve at the pleasure of the Governor. There shall be one member from each Congressional District.

1. Four of the members of the executive committee shall be the chairmen of each of the four standing committees provided for herein.

2. Two of the members of the executive committee shall be appointed from among the Commission membership.

3. The Governor shall designate the chairman and vice chairman of the executive committee. The chairman shall preside at all meetings of the executive committee and shall have the power to call meetings and the vice chairman shall perform these functions in the absence of the chairman.

B. Four members of the executive committee shall constitute a quorum and a majority of a quorum present may act for the committee. The executive committee shall meet at least monthly or more often at the call of the chairman. It shall be the duty of the executive committee to approve or disapprove actions proposed by the four standing committees within the Commission and refer the proposals for final approval or rejection to the Commission. Any decision by the executive committee may be overruled by a majority vote of the membership of the entire Commission.

Added by Laws 1975, c. 323, § 8, operative July 1, 1975.

§ 8.6 Fiscal matters

A. Members of the Commission shall serve without salary but may be reimbursed for travel and other expenses in attending meetings and performing their duties in the manner provided for other state officers and employees.

B. No other provisions of law shall be construed as prohibiting public officers from also serving as members of the Commission, nor shall any other provisions of law be construed as prohibiting public officers or public employees from performing services for the Commission and receiving compensation for same from funds of the Commission.

C. It is further provided that no town, city, county or other subdivision or other agency of state government shall be prohibited from receiving a grant or from benefiting from grants or expenditures of the Commission for the reason that an officer or employee of such town, city, county or other subdivision or agency of state government is a Commission member or employee.

Added by Laws 1975, c. 323, § 9, operative July 1, 1975.

§ 8.7 Powers and duties of Commission

The Commission shall have the following powers and duties:

1. To act as the state planning agency under Public Law 90–351, the Omnibus Crime Control and Safe Streets Act of 1968,[1] as amended.

2. To do all things necessary to apply for, qualify for, accept and distribute any state, federal or other funds made available or allotted under Public Law 90–351, and any other law or program designed to improve the administration of criminal process, court systems, law enforcement, prosecution, corrections, probation and parole, juvenile delinquency programs and related fields.

3. To review and approve all applications for funds. Neither the Commission's action plan nor distribution of funds thereunder may be used to discriminate against any part of Oklahoma.

4. To review and approve rules and regulations, procedures and policies relating to applications for distribution of funds made available to the state pursuant to Public Law 90–351, or under any other law or program.

5. In the distribution of planning funds and action grants, the Commission shall:

a. give due regard to the relative needs of different areas for planning and program help,

b. consider population and the incidence of major crime,

c. consider the greatest needs of the people of the state, and

d. weigh probable contribution of the grant to the improvement of law enforcement through conventional programs and through new, innovative or pilot approaches.

6. To develop plans for the prevention, detection and control of crime in the administration of the criminal process. In developing these plans, the Commission may conduct studies, survey resources and identify needs for research and development in this field.

7. To encourage coordination, planning and research by law enforcement and criminal justice agencies throughout the state and to act as a clearing house for proposals and projects in this field.

8. To develop plans for the dissemination of information on proposed, existing and completed research and development projects.

9. To advise the Governor, Legislature and the various state departments and local jurisdictions charged with responsibility in the criminal process.

10. To advise the Executive Director in the performance of his duties.

11. To keep minutes of each meeting of the Commission and distribute copies to each Commission member.

12. To require an annual accounting to the chairman and vice chairman of the Legislative Council, one (1) month after the end of each fiscal year, of all receipts and disbursements of the Commission.

13. To make all records of the Commission, financial or otherwise, available to the public for inspection upon request.

Added by Laws 1975, c. 323, § 10, operative July 1, 1975.

[1] 42 U.S.C.A. § 3701 et seq.

§ 8.8 Executive Director

A. The Governor shall appoint the Executive Director of the Oklahoma Crime Commission who shall serve for a term coextensive with that of the Governor. The appointment shall be subject to Senate confirmation within thirty (30) days after the appointment or the convening of the next legislative session if the Legislature is not in session on the date of appointment.

B. The Executive Director shall perform such duties as directed by the Commission for the accomplishment of the Commission's purposes. He shall appoint and fix the duties and compensation of the employees, not otherwise prescribed by law, upon the approval of the Commission, and otherwise direct the work of the staff in performing the functions and accomplishing the purposes of the Commission.

Added by Laws 1975, c. 323, § 11, operative July 1, 1975.

§ 8.9 Budget—Itemized statements

The Executive Director shall file a copy of the Crime Commission budget each year in the same manner as state agencies file their annual budgets. Any nongovernmental entity or nonprofit corporation receiving any funds from federal grants administered by the Crime Commission shall file an itemized statement of all such funds received by July 1 of each year after receiving any such funds. The itemized statement shall contain the following information:

1. All funds received;

2. All funds disbursed;

3. The dates of all transactions relating to such funds; and

4. The recipients of all such funds.

Added by Laws 1975, c. 323, § 12, operative July 1, 1975.

§ 8.10 Political activity

No person employed by the Commission shall be a candidate for any political office while so employed, nor shall any member of the Commission or any person employed by the Commission use, either directly or indirectly, any of the funds, facilities, supplies or equipment under the control of the Commission for any political purpose. Any person who

wilfully and knowingly violates the provisions of this section shall be guilty of a misdemeanor and shall be punished according to law.
Added by Laws 1975, c. 323, § 13, operative July 1, 1975.

§ 8.11 Administrative Procedures Act

The terms and provisions of the Administrative Procedures Act, Sections 301 through 327, Title 75 of the Oklahoma Statutes, shall apply to all proceedings and functions of the Commission, and the Commission shall be deemed an "agency" as defined in that act. Provided that such provisions shall apply to procedures relating to the acceptance and disbursement of funds made available or allotted under Public Law 90–351,[1] and any other law or program designed to improve the administration of criminal process, court systems, law enforcement, prosecution, corrections, probation and parole, juvenile delinquency programs and related fields.
Added by Laws 1975, c. 323, § 14, operative July 1, 1975.

[1] 42 U.S.C.A. § 3701 et seq.

§ 118.4 Division of Data Processing Planning

The Division of Data Processing Planning is hereby created within the State Board of Public Affairs. The Board shall, through said Division, control the utilization of, acquisition, replacement, disposition and such data processing equipment as is necessary for the conduct of the state's business by the various agencies of the state. The Division shall establish a data processing service center to provide necessary services to all state agencies.
Laws 1971, c. 343, § 4, emerg. eff. June 25, 1971. Amended by Laws 1975, c. 56, § 3, emerg. eff. April 10, 1975.

§ 118.12 State agencies authorized to maintain installations

After April 30, 1975, no state agency except the following shall be authorized to maintain an electronic data processing equipment installation:

1. Department of Institutions, Social and Rehabilitative Services;
2. Commission on Criminal and Traffic Law Enforcement;
3. Oklahoma Employment Security Commission;
4. State Treasurer;
5. State Department of Education and State Department of Vocational and Technical Education;
6. Division of Data Processing Planning;
7. Institutions within The State System of Higher Education;
8. Legislative branch of government; and
9. Judicial branch of government.

All other currently installed electronic data processing equipment shall become the property of the Division and shall be disposed of or utilized as directed by the Division. The Director shall implement an orderly and reasonable transition as required by this act which shall be accomplished by July 1, 1975. The Division shall be responsible for coordinating the matching of agencies requiring utilization of data processing equipment with agencies which have suitable nonutilized data processing capabilities, and all employees of agencies which provide data processing equipment or services to another agency may perform those duties as necessary for the processing and programming of records and shall be subject to any restrictions of confidentiality or privileged information imposed by any statute pertaining to that information or those documents being processed or programmed and those employees shall be subject to any penalty provisions for violation of the applicable statute; except where provided by agreement, regulation or statute of the federal government or any of its agencies, where such agreement, regulation or statute has been approved as an exception by the appropriate state agency.
Laws 1971, c. 343, § 12, emerg. eff. June 25, 1971. Amended by Laws 1975, c. 56, § 8, emerg. eff. April 10, 1975; Laws 1976, c. 283, § 1, emerg. eff. June 17, 1976.

Library references
States ⚖67. C.J.S. States §§ 58, 66.

§ 118.13 Reports

Each agency which maintains data processing equipment shall report such information relative to the usage, inventory and personnel of such equipment as provided in the rules and regulations of the Division.
Laws 1971, c. 343, § 13, emerg. eff. June 25, 1971. Amended by Laws 1975, c. 56, § 9, emerg. eff. April 10, 1975.

§ 118.17 Storage and confidentiality of information stored in data processing center

A. The storage of data in the state centralized data processing center operated by the State Board of Public Affairs, identified as confidential and privileged, by a serviced agency or by state statutes shall be accomplished in a manner as to preclude access to such stored information without the express authorization of the serviced agency. The storage of such information in the centralized data processing center operated by the State Board of Public Affairs shall not operate to destroy the provisions of other state statutes pertaining to the safeguard of confidential and privileged information.

B. State Board of Public Affairs employees charged with the custody of confidential and privileged information in the administration of data processing services to other state agencies, or any other person who secured information therefrom, shall neither divulge nor disclose any information obtained except to the serviced agency.

C. Any violation of the provisions of this section shall constitute a misdemeanor, and shall be punishable by a fine not exceeding One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term not exceeding one (1) year, or by both such fine and imprisonment; and the offender shall be removed or dismissed from office.
Added by Laws 1975, c. 318, § 7, emerg. eff. June 12, 1975.

74 § 150.2 Powers and duties

The State Bureau of Investigation shall have the following duties and responsibilities:

1. To maintain scientific laboratories to assist all law enforcement agencies in the discovery and detection of criminal activity;
2. To maintain fingerprint and other identification files;
3. To operate teletype, mobile and fixed radio or other communications systems;
4. To conduct schools and training programs for the agents, peace officers and technicians of this state charged with the enforcement of law and order and the investigation and detection of crime;
5. To assist all law enforcement officers and district attorneys when such assistance is requested, in accordance with the policy determined by the Commission;
6. To investigate and detect criminal activity as directed by the Governor.

Added by Laws 1976, c. 259, § 2, operative July 1, 1976.

§ 150.4 Commission—Powers and duties

The Commission shall have the following powers and duties and responsibilities:

1. To appoint the Director of the Oklahoma State Bureau of Investigation, whose compensation shall be determined by the Legislature.
2. To hear any complaint against the Bureau or any of its employees according to the following procedure:
   a. Only those complaints which have been submitted in writing and are signed will be acted upon by the Commission.
   b. All hearings on complaints shall be conducted in executive sessions, and shall not be open to the public.
   c. The Commission shall have limited access to pertinent investigative files when investigating a complaint. The Director shall provide a procedure whereby the identification of all persons named in any investigative file except the subject of the complaint and the complaining witness shall not be revealed to the members of the Commission. Any consideration of files shall be in executive session not open to the public. No information or evidence received in connection with the hearings shall be revealed to any person or agency. Any violation hereof shall be grounds for removal from the Commission, and shall constitute a misdemeanor.
3. To make recommendations to the Director of any needed disciplinary action necessary as a result of an investigation conducted upon a complaint received.
4. To establish general procedures with regard to assisting law enforcement officers and district attorneys.
5. To establish a program of training for agents utilizing such courses as the National Police Academy conducted by the Federal Bureau of Investigation.

Added by Laws 1976, c. 259, § 4, operative July 1, 1976.

§ 150.5 Investigations—Persons to initiate request

A. Oklahoma State Bureau of Investigation investigations not covered under Section 2 of this act [1] shall be initiated at the request of the following persons:

1. The Governor;

2. The Attorney General;

3. The Council on Judicial Complaints upon a vote by a majority of said Council; or

4. The chairman of any Legislative Investigating Committee which has been granted subpoena powers by resolution, upon authorization by a vote of the majority of said Committee.

Such requests for investigations shall be submitted in writing and shall contain specific allegations of wrongdoing under the laws of the State of Oklahoma.

B. The Governor may initiate special background investigations with the written consent of the person who is the subject of the investigation.

C. All records relating to any investigation being conducted by the Bureau shall be confidential and shall not be open to the public or to the Commission except as provided in Section 4 of this act.[2] Any unauthorized disclosure of any information contained in the confidential files of the Bureau shall be a misdemeanor. The person or entity authorized to initiate investigations in subsection A of this section shall receive a report of the results of the requested investigation. The person or entity requesting the investigation may give that information only to the appropriate prosecutorial officer or agency having statutory authority in the matter if that action appears proper from the information contained in the report, and shall not reveal or give such information to any other person or agency. Violation hereof shall be deemed wilful neglect of duty and shall be grounds for removal from office.

Added by Laws 1976, c. 259, § 5, operative July 1, 1976.

§ 150.7 Director—Powers and duties

The Director of the Oklahoma State Bureau of Investigation shall have the following powers, duties and responsibilities:

1. To appoint or dismiss a Deputy Director who shall have the same qualifications as the Director;

2. To supervise the maintaining of all reports and records of the Bureau which shall be kept for at least ten (10) years. Such records shall not be transferred to the custody or control of the State Archives Commission. The Director may, after said ten-year period, order destruction of records deemed to be no longer of value to the Bureau;

3. To report to the Commission at each regular meeting, or as directed by the Commission, the current workload of the Bureau. Such reports shall be submitted by category of the persons or entities authorized to initiate investigations as provided for in subsection A of Section 5 of this act,[1] and any other category the Commission may request which does not violate the confidentiality restrictions imposed in this act. Such reports shall contain the following information:

   a. what types of investigations are pending,
   b. what new types of investigations have been opened,
   c. what types of investigations have been closed, and
   d. what criminal charges have been filed as a result of Bureau investigations.

The reports shall not contain any information on the individual subjects of the investigation or persons questioned in connection with an investigation. These reports shall be open for public inspection; and

4. To designate positions, appoint employees and fix salaries of the Bureau.

Added by Laws 1976, c. 259, § 7, operative July 1, 1976.

§ 150.9 System of criminal identification

The Oklahoma State Bureau of Investigation shall procure and file for record, photographs, descriptions, fingerprints, measurements and other pertinent information relating to all persons who have been convicted of a felony within the state and of all well-known and habitual criminals, and it shall be the duty of the persons in charge of any state institution to furnish such data upon the request of the Director of the Bureau. The Oklahoma State Bureau of Investigation shall cooperate with and assist the sheriffs, chiefs of police and other law enforcement officers of the state in the establishment of a complete system of criminal identification, and shall file for record the fingerprint impressions of all persons confined in any workhouse, jail, reformatory or penitentiary on felony charges, and any other pertinent information concerning such persons as it may from time to time receive from the law enforcement officers of this and other states.

Added by Laws 1976, c. 259, § 9, operative July 1, 1976.

§ 150.10 Uniform crime reporting system

A. A uniform crime reporting system shall be established by the Oklahoma State Bureau of Investigation. The Director shall have the power and duty, when directed by the Commission, to collect and gather such information from such state agencies as may be prescribed in this act.

B. The Oklahoma State Bureau of Investigation is hereby designated as the agency which shall collect, gather, assemble and collate such information as is prescribed by this section.

C. All state, county, city and town law enforcement agencies shall submit a quarterly report to the Oklahoma State Bureau of Investigation on forms prescribed by the Bureau, which report shall contain the number and nature of offenses committed within their respective jurisdictions, the disposition of such matters, and such other information as the Bureau may require, respecting information relating to the cause and prevention of crime, recidivism, the rehabilitation of criminals and the proper administration of criminal justice.

D. Upon receipt of such information the Director shall have such data collated and formulated and shall compile such statistics as he may deem necessary in order to present a proper classification and analysis of the volume and nature of crime and the administration of criminal justice within this state.

Added by Laws 1976, c. 259, § 10, operative July 1, 1976.

§ 150.12 Felony arrest—Sending fingerprints to State and Federal Bureaus

It is hereby made the duty of any sheriff, chief of police, city marshal, constable and any other law enforcement officer, immediately upon the arrest of any person who, in the best judgment of the arresting officer, is wanted on the charge of the commission of a felony, or who is believed to be a fugitive from justice, or upon the arrest of any person who is in the possession at the time of his arrest of goods or property, reasonably believed to have been stolen by such person, or in whose possession is found a burglary outfit, tools or keys or explosives, reasonably believed to be intended for unlawful use by such person, or who is in possession of an infernal machine, bomb, or other contrivance, in whole or in part, and reasonably believed to be intended for no lawful purpose, or who is carrying concealed firearms or other deadly weapon, reasonably believed to be intended for use in an unlawful purpose, or who is in possession of ink, die, paper or other articles used in the making of counterfeit bank notes, or in the alteration of bank notes, or dies, molds, or other articles used in making counterfeit money, defacing or changing numbers on motor vehicles and reasonably believed to be intended for any unlawful purpose, to cause fingerprint impressions in triplicate to be made of such person or persons and forward one (1) copy of such impression to the State Bureau of Investigation, at its Oklahoma City office, and one (1) copy to the Federal Bureau of Investigation, at its Washington, D.C., office, the other copy to be filed in his office. This section is not intended to include violators of city or town ordinances, or persons arrested for ordinary misdemeanors, and great care shall be exercised to exclude such persons.

Added by Laws 1976, c. 259, § 12, operative July 1, 1976.

74 § 201. Creation

There is hereby created the Oklahoma Center for Criminal Justice.
Added by Laws 1971, c. 36, § 1, emerg. eff. March 25, 1971.

§ 204. Purpose

The purpose of the Oklahoma Center for Criminal Justice is to promote the effective administration of criminal justice.
Added by Laws 1971, c. 36, § 4, emerg. eff. March 25, 1971.

Library references
States ⇐45. C.J.S. States §§ 52, 66.

§ 205. Contracts—Gifts and grants

The Oklahoma Center for Criminal Justice is empowered to contract with governmental agencies, private agencies, and individuals. It is authorized to receive grants, gifts, and public funds, and to properly dispense any funds so received.
Added by Laws 1971, c. 36, § 5, emerg. eff. March 25, 1971.

REVISED MODEL STATE ADMINISTRATIVE PROCEDURE ACT (1961 ACT)

75 § 301. Definitions

As used in this act:

(1) "agency" means any state board, commission, department, authority, bureau or officer authorized by the constitution or statutes to make rules or to formulate orders, except:

(a) The legislature or any branch, committee or officer thereof;

(b) The courts;

(c) The Oklahoma Tax Commission, Oklahoma Public Welfare Commission, Oklahoma State Highway Commission, and Oklahoma Corporation Commission, except with respect to Section 4(a) of this act; [1]

(d) The Pardon and Parole Board;

(e) The Oklahoma Military Department;

(f) The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, in respect to the institutional supervision, custody, control, care or treatment of inmates, prisoners, or patients therein;

(g) The Board of Regents or employees of any university, college, or other institution of higher learning, except with respect to expulsion of any student for disciplinary reasons; provided, that any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion or suspension for a period exceeding one week, shall not be subject to the provisions of this act; and further providing that a student in a state-supported institution of higher learning against whom a disciplinary proceeding shall have been commenced upon sworn affidavit on one of the following grounds of misconduct, may forthwith be barred from the campus and be removed from any college or university-owned housing, pending final determination of the proceeding against him:

1. participation in a riot as defined by the penal code;

2. possession or sale of any drugs or narcotics prohibited by the penal code;

3. wilful destruction of or wilful damage to state property;

4. unauthorized presence in or occupation of any part of the campus after resisting an order to leave by duly constituted authority;

(2) "rule" means any agency statement of general applicability and future effect that implements, interprets or prescribes substantive law or policy, or prescribes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include (A) the issuance, renewal or denial of licenses; (B) the approval, disapproval or prescription of rates; (C) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; (D) interagency memoranda; or (E) declaratory rulings issued pursuant to Section 8; [2]

(3) "license" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;

(4) "licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license;

(5) "rule making" means the process employed by an agency for the formulation of a rule;

(6) "order" means all or part of the final or intermediate decision (whether affirmative, negative, injunctive or declaratory in form) by an agency in any matter other than rule making, or rulings on motions or objections made during the course of a hearing, or exclusions described in clauses (C) and (D) of subsection (2) of this Section 1;

(7) "individual proceeding" means the process employed by an agency for the formulation of an order;

(8) "party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in an individual proceeding;

(9) "person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

Laws 1963, c. 371, § 1. Laws 1969, c. 128, § 1, eff. April 7, 1969.

§ 309. Individual proceedings—Notice—Hearing

(a) In an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved;

(4) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(c) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(d) Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

(e) The record in an individual proceeding shall include:

(1) all pleadings, motions and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings thereon;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the officer presiding at the hearing;

(7) all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

(f) Oral proceedings or any part thereof shall be transcribed on request of any party.

(g) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Laws 1963, c. 371, § 9.

§ 318. Judicial review

(1) Any person or party aggrieved or adversely affected by a final order in an individual proceeding, whether such order is affirmative or negative in form, is entitled to certain, speedy, adequate and complete judicial review thereof under this act, but nothing in this section shall prevent resort to other means of review, redress, relief or trial de novo, available because of constitutional provisions. Neither a motion for new trial nor an application for rehearing shall be prerequisite to secure judicial review.

(2) The judicial review prescribed by this section, as to orders rendered in individual proceedings by agencies whose orders are made subject to review, under constitutional or statutory provisions, by appellate proceedings in the Supreme Court of Oklahoma, shall be afforded by such proceedings taken in accordance with the procedure and under the conditions otherwise provided by law, but subject to the applicable provisions of Sections 319 through 324 of this title, and the rules of the Supreme Court. In all other instances, proceedings for review shall be instituted by filing a petition, in the district court of the county in which the party seeking review resides or at the option of such party where the property interest affected is situated, within thirty (30) days after the appellant is notified of the order as provided in Section 312 of this title. Copies of the petition shall be served upon the agency and all other parties of record, and proof of such service shall be filed in the court within ten (10) days after the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

Amended by Laws 1977, c. 114, § 2, eff. Oct. 1, 1977.

(Presentence Report)

137.077 Presentence report; general principles of disclosure. The presentence report is not a public record and shall be available only to:

(1) The sentencing court for the purpose of assisting the court in determining the proper sentence to impose and to other judges who participate in a sentencing council discussion of the defendant.

(2) The Corrections Division, State Board of Parole and other persons or agencies having a legitimate professional interest in the information likely to be contained therein.

(3) Appellate or review courts where relevant to an issue on which an appeal is taken or post-conviction relief sought.

(4) The district attorney, the defendant or his counsel, as provided in ORS 137.079.
[1973 c.836 s.260]

137.079 Presentence report; disclosure to parties, court's authority to except parts from disclosure. (1) A copy of the presentence report shall be made available to the district attorney, the defendant or his counsel a reasonable time before the sentencing of the defendant.

(2) The court may except from disclosure parts of the presentence report which are not relevant to a proper sentence, diagnostic opinions which might seriously disrupt a program of rehabilitation if known by the defendant, or sources of information which were obtainable only on a promise of confidentiality.

(3) If parts of the presentence report are not disclosed under subsection (2) of this section, the court shall inform the parties that information has not been disclosed and shall state for the record the reasons for the court's action. The action of the court in excepting information shall be reviewable on appeal.
[1973 c.836 s.261]

137.225 Order setting aside conviction; prerequisites; limitations. (1) Every defendant convicted of a Class C felony, or the crime of possession of the narcotic drug marijuana when that crime was punishable as a felony only, or a crime punishable as either a felony or a misdemeanor in the discretion of the court, or a misdemeanor, including a violation of a municipal ordinance for which a jail sentence may be imposed, or a violation as described by ORS 167.207, 167.217 or 167.222, at any time after the lapse of three years from the date of pronouncement of judgment, if he has fully complied with and performed the sentence of the court, and is not under charge of commission of any crime, may move the court wherein such conviction was entered for an entry of an order setting aside such conviction. A copy of the motion and a full set of the defendant's fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation and opportunity be given to contest the motion. The fingerprint card with the notation "motion for setting aside conviction", shall be forwarded to the bureau. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney. Upon hearing the motion the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. If the court determines that the circumstances and behavior of the applicant from the date of conviction to the date of the hearing on the motion warrant setting aside the conviction, it shall enter an appropriate order which shall state the original arrest charge and the conviction charge if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has

been established by the bureau and further identified as to state bureau number or submitting agency number. Upon the entry of such an order, the applicant for purposes of the law shall be deemed not to have been previously convicted and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest resulting in the criminal proceeding. The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Corrections Division when the person has been in the custody of the Corrections Division. Upon entry of such an order, such conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to their occurrence.

(2) The provisions of subsection (1) of this section do not apply to:

(a) A state or municipal traffic offense; or

(b) A person convicted, within the 10-year period immediately preceding the filing of his motion pursuant to subsection (1) of this section, of more than one offense, excluding motor vehicle violations, whether the second or additional convictions occurred in the same action in which the conviction as to which relief is sought occurred or in another action. Notwithstanding subsection (1) of this section, a conviction which has been set aside under this section shall be considered for the purpose of determining whether this paragraph is applicable.

(3) The provisions of subsection (1) of this section apply to convictions which occurred before, as well as those which occurred after, September 9, 1971.

(4) For purposes of any civil action in which truth is an element of a cause of action or affirmative defense, the provisions of this section providing that the conviction, arrest or other proceeding be deemed not to have occurred shall not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interest of justice.

[1971 c.434 s.2; 1973 c.680 s.3; 1973 c.689 s.1a; 1973 c.836 s.265; 1975 c.548 s.10; 1975 c.714 s.2]

137.275 Effect of felony conviction on civil and political rights of felon. Except as otherwise provided by law, a person convicted of a felony does not suffer civil death or disability, or sustain loss of civil rights or forfeiture of estate or property, but retains all of his rights, political, civil and otherwise, including, but not limited to, the right to vote, to hold, receive and transfer property, to enter into contracts, including contracts of marriage, and to maintain and defend civil actions, suits or proceedings.

[1975 c.781 s.1]

162.225 Definitions for ORS 162.225 to 162.375. As used in ORS 162.225 to 162.375 and 162.465, unless the context requires otherwise:

(1) "Fireman" means any fire or forestry department employe, or authorized fire department volunteer, vested with the duty of preventing or combating fire or preventing the loss of life or property by fire.

(2) "Official proceeding" means a proceeding before any judicial, legislative or administrative body or officer, wherein sworn statements are received, and includes any referee, hearing examiner, commissioner, notary or other person taking sworn statements in connection with such proceedings.

(3) "Physical evidence" means any article, object, record, document or other evidence of physical substance.

(4) "Public record" means any book, document, paper, file, photograph, sound recording, computerized recording in machine storage, records or other materials, regardless of physical form or characteristic, made, received, filed or recorded in any government office or agency pursuant to law or in connection with the transaction of public business, whether or not confidential or restricted in use.

(5) "Testimony" means oral or written statements that may be offered by a witness in an official proceeding.

[1971 c.743 s.197]

137.560 Copies of certain orders to be sent to Corrections Division. Within 10 days following the issuing of any order of suspension or imposition or execution of sentence or of probation of any person convicted of a crime, or of the continuation, extension, modification or revocation of any such order, or of the discharge of such person, or the recommendation by the court to the Governor of the pardon of such person, the judge issuing such an order shall send a copy of the same to the Administrator of the Corrections Division.

[Amended by 1973 c.836 s.271]

162.305 Tampering with public records. (1) A person commits the crime of tampering with public records if, without lawful authority, he knowingly destroys, mutilates, conceals, removes, makes a false entry in or falsely alters any public record.

(2) Tampering with public records is a Class A misdemeanor.

[1971 c.743 s.205]

STATE POLICE

181.010 Definitions for ORS 181.010 to 181.540. As used in ORS 181.010 to 181.540, unless the context requires otherwise:

(1) "Bureau" means the Department of State Police Bureau of Criminal Identification.

(2) "Criminal offender information" includes records and related data, fingerprints received and compiled by the bureau for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement and release.

(3) "Crime for which criminal offender information is required" means:

(a) Any felony;

(b) Any misdemeanor or other offense which involves criminal sexual conduct;

(c) Any offense which involves the use or sale of narcotic drugs as defined in ORS 474.010 or dangerous drugs defined in ORS 475.010.

(4) "Department" means the Department of State Police established under ORS 181.020.

(5) "Deputy superintendent" means the Deputy Superintendent of State Police.

(6) "Law enforcement agency" means county sheriffs, municipal police departments, State Police, other police officers of this and other states and law enforcement agencies of the Federal Government.

(7) "State Police" means the members of the state police force appointed under ORS 181.250.

(8) "Superintendent" means the Superintendent of State Police.

(9) "Criminal Justice Agency" means:

(a) The Governor,

(b) Courts of criminal jurisdiction,

(c) The Attorney General,

(d) District attorneys,

(e) Law enforcement agencies,

(f) The Corrections Division,

(g) The State Board of Parole, and

(h) Any other state or local agency designated by order of the Governor.

(10) "Disposition report" means a form or process prescribed or furnished by the bureau, containing a description of the ultimate action taken subsequent to an arrest.

[Amended by 1963 c.547 s.1; 1971 c.467 s.1; 1975 c.548 s.1]

181.066 Bureau of criminal identification. (1) There is established in the department a bureau of criminal identification which shall be operated by the department.

(2) The bureau shall:

(a) Install and maintain systems for filing and retrieving fingerprint data and supplemental information submitted by criminal justice agencies for the identification of criminal offenders as the superintendent deems necessary;

(b) Employ its fingerprint record file as a basis for identifying individuals and providing criminal offender information to criminal justice agencies while acting in the performance of their official duties; and

(c) Undertake such other projects as are necessary or appropriate to the speedy collection and dissemination of information relating to crimes and criminals.

[1975 c.548 s.3 (enacted in lieu of 181.065); 1975 c.605 s.11a]

181.511 Fingerprints, identifying data, disposition report required. (1) A law enforcement agency immediately upon the arrest of a person for a crime shall:

(a) Place the required fingerprints and identifying data on forms prescribed or furnished by the bureau, photograph the arrested person, and promptly transmit the form and photograph to the bureau.

(b) If the arrest is disposed of by the arresting agency, cause the disposition report to be completed and promptly transmitted to the bureau.

(c) If the arrest is not disposed of by the agency, cause the disposition report to be forwarded to the court that will dispose of the charge for action by the court in accordance with ORS 181.521.

(2) A law enforcement agency may record, in addition to fingerprints, the palm prints, sole prints, toe prints, or other personal identifiers when, in the discretion of the agency, it is necessary to effect identification of the persons or to the investigation of the crime charged.

181.555 Establishment of procedures for access to criminal record information. The department shall adopt rules under ORS 183.310 to 183.500 establishing procedures:

(1) Limiting access to information to criminal justice and other state and local agencies when the information is required to perform a duty or function expressly required by statute;

(2) For individual inspection and challenge of criminal record information relating to himself; and

(3) Providing for purging or expunging of inaccurate and incomplete arrest, charge and disposition information.
[1975 c.548 s.8]

192.001 Policy concerning public records. (1) The Legislative Assembly finds that:

(a) The records of the state and its political subdivisions are so interrelated and interdependent, that the decision as to what records are retained or destroyed is a matter of state-wide public policy.

(b) The interest and concern of citizens in public records recognizes no jurisdictional boundaries, and extends to such records wherever they may be found in Oregon.

(c) As local programs become increasingly intergovernmental, the state and its political subdivisions have a responsibility to insure orderly retention and destruction of all public records, whether current or noncurrent, and to insure the preservation of public records of value for administrative, legal and research purposes.

(2) The purpose of ORS 192.005 to 192.170 and 357.805 to 357.895 is to provide direction for the retention or destruction of public records in Oregon, and to assure the retention of records essential to meet the needs of the Legislative Assembly, the state, its political subdivisions and its citizens, in so far as the records affect the administration of government, legal rights and responsibilities, and the accumulation of information of value for research purposes of all kinds. All records not included in types described in this subsection shall be destroyed in accordance with the rules adopted by the Secretary of State.
[1973 c.439 s.1]

192.005 Definitions for ORS 192.005 to 192.170. As used in ORS 192.005 to 192.170, unless the context requires otherwise:

(1) "Archivist" means the State Archivist.

(2) "Photocopy" includes a photograph, microphotograph and any other reproduction on paper or film in any scale.

(3) "Photocopying" means the process of reproducing, in the form of a photocopy, a public record or writing.

(4) "Political subdivision" means a city, county, district or any other municipal or public corporation in this state.

(5) "Public record" means a document, book, paper, photograph, file, sound recording or other material, such as court files, mortgage and deed records, regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use. "Public records" includes correspondence, public records made by photocopying and public writings, but does not include:

(a) Records of the Legislative Assembly, its committees, officers and employes.

(b) Library and museum materials made or acquired and preserved solely for reference or exhibition purposes.

(c) Extra copies of a document, preserved only for convenience of reference.

(d) A stock of publications.

(6) "Public writing" means a written act or record of an act of a sovereign authority, official body, tribunal or public officer of this state, whether legislative, judicial or executive.

(7) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state. However, "state agency" does not include the Legislative Assembly or its committees, officers and employes.
[1961 c.160 s.2; 1965 c.302 s.1]

192.040 Making, filing and recording records by photocopying. A state agency or political subdivision making public records or receiving and filing or recording public records, may do such making or receiving and filing or recording by means of photocopying. Such photocopying shall, except for records which are treated as confidential pursuant to law, be made, assembled and indexed, in lieu of any other method provided by law, in such manner as the governing body of the state agency or political subdivision considers appropriate.
[Amended by 1961 c.160 s.5]

(3) A law enforcement agency, for the purpose of identification, may record and submit to the bureau the fingerprints of persons arrested for crimes for which criminal offender information is not required.

(4) The prosecuting attorney shall submit to the court a disposition report for submission by the court to the bureau in accordance with ORS 181.521.
[1975 c.548 s.5 (enacted in lieu of 181.510)]

181.520 [1963 c.547 s.4; repealed by 1975 c.548 s.6 (181.521 enacted in lieu of 181.520)]

181.521 Courts to report disposition of certain cases; State Court Administrator to inquire about status of arrests. Courts shall cause the final court order or judgment of a crime for which criminal offender information is required to be reported promptly to the bureau. The State Court Administrator, upon notice by the bureau, shall make inquiry as to the status of an arrest which has not been reported disposed of within a reasonable time after the date of arrest. If from such inquiry the State Court Administrator believes that a court, or its clerk or administrator, may not be making satisfactory reports of dispositions he shall report his findings in relation thereto to the Supreme Court for its action.
[1975 c.548 s.5a (enacted in lieu of 181.520)]

181.530 Report of release or escape from state institution of certain inmates. (1) The superintendent of any institution of this state shall notify the bureau prior to the release or immediately after the escape from such institution, of any person committed to such institution, for a crime for which a report is required or under civil commitment as a sexually dangerous person. The notice shall state the name of the person to be released or who has escaped, the county in which he was convicted or from which he was committed and, if known, the address or locality at which he will reside.

(2) Promptly upon receipt of the notice required by subsection (1) of this section, the bureau shall notify all law enforcement agencies in the county in which the person was convicted or from which he was committed and in the county, if known, in which the person will reside.
[1963 c.547 s.5]

181.535 Criminal identification information availability to Executive Secretary of Oregon Racing Commission. (1) The department may, upon request of the Oregon Racing Commission, furnish to the Executive Secretary of the Oregon Racing Commission such information as the department may have in its possession from its central bureau of criminal identification, including but not limited to manual or computerized information and data.

(2) For the purposes of requesting and receiving the information and data described in subsection (1) of this section, the Oregon Racing Commission is a "state agency" and a "criminal justice agency" and its enforcement agents are "peace officers" within this chapter and rules adopted thereunder.
[1975 c.549 s.19]

181.540 Confidentiality of records. Notwithstanding the provisions of ORS 192.410 to 192.500 relating to public records the fingerprints, photographs, records and reports compiled under ORS 137.225, 181.010, 181.511, 181.521, 181.555 and this section are confidential and exempt from public inspection except:

(1) As ordered by a court; or

(2) As provided in rules adopted by the department under ORS 183.310 to 183.500 to govern access to and use of computerized criminal offender information including access by an individual for review or challenge of his own records.
[1963 c.547 s.7; 1973 c.794 s.16; 1975 c.548 s.7]

181.550 Reporting of crime statistics. (1) All law enforcement agencies shall report to the Executive Department statistics concerning crimes:

(a) As directed by the Executive Department, for purposes of the Uniform Crime Reporting System of the Federal Bureau of Investigation; and

(b) As otherwise directed by the Governor concerning general criminal categories of criminal activities but not individual criminal records.

(2) The Executive Department shall prepare:

(a) Quarterly and annual reports for the use of agencies reporting under subsection (1) of this section, and others having an interest therein; and

(b) Special reports as directed by the Governor.
[1973 c.130 s.2]

INSPECTION OF PUBLIC RECORDS

192.410 Defintions for ORS 192.410 to 192.500. As used in ORS 192.410 to 192.500:

(1) "Public body" includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state.

(2) "State agency" includes every state officer, agency, department, division, bureau, board and commission.

(3) "Person" includes any natural person, corporation, partnership, firm or association.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

(5) "Writing" means handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.
[1973 c.794 s.2]

192.420 Right to inspect public records. Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.500.
[1973 c.794 s.3]

192.440 Certified copies of public records; fees. (1) The custodian of any public record which a person has a right to inspect shall give him, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making such records available.
[1973 c.794 s.5]

192.450 Petition to review denial of right to inspect state public record; appeal from decision of Attorney General denying inspection. (1) Subject to ORS 192.480, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. The burden is on the agency to sustain its action. The Attorney General shall issue his order denying or granting the petition, or denying it in part and granting it in part, within seven days from the day he receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if he grants the petition in part and orders the state agency to disclose a portion of the record, the state agency shall comply with the order in full within seven days after issuance of the order, unless within the seven-day period it issues a notice of its intention to institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County. Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner at the address shown on the petition. The state agency shall institute the proceedings within seven days after it issues its notice of intention to do so. If the Attorney General denies the petition in whole or in part, or if the state agency continues to withhold the record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for the state agency in a suit filed under subsection (2) of this section if the suit arises out of a determination by him that the public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with his order requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel.
[1973 c.794 s.6; 1975 c.308 s.2]

192.460 Procedure to review denial of right to inspect other public records. ORS 192.450 is equally applicable to the case of a person denied the right to inspect or receive a copy of any public record of a public body other than a state agency, except that in such case the district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body

are located, shall carry out the functions of the Attorney General, and any suit filed shall be filed in the circuit court for such county, and except that the district attorney shall not serve as counsel for the public body, in the cases permitted under subsection (3) of ORS 192.450, unless he ordinarily serves as counsel for it.
[1973 c.794 s.7]

192.465 Effect of failure of Attorney General, district attorney or public official to take timely action on inspection petition. (1) The failure of the Attorney General or district attorney to issue an order under ORS 192.450 or 192.460 denying, granting, or denying in part and granting in part a petition to require disclosure within seven days from the day of receipt of the petition shall be treated as an order denying the petition for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

(2) The failure of an elected official to deny, grant, or deny in part and grant in part a request to inspect or receive a copy of a public record within seven days from the day of receipt of the request shall be treated as a denial of the request for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.
[1975 c.308 s.5]

192.470 Petition form; procedure when petition received. (1) A petition to the Attorney General or district attorney requesting him to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

——— (date)

I (we), ——— (name(s)), the undersigned, request the Attorney General (or District Attorney of ——— County) to order ——— (name of governmental body) and its employes to (make available for inspection) (produce a copy or copies of) the following records:

1. ———
(Name or description of record)

2. ———
(Name or description of record)

I (we) asked to inspect and/or copy these records on ——— (date) at ——— (address). The request was denied by the following person(s):

1. ———
(Name of public officer or employe; title or position, if known)

2. ———
(Name of public officer or employe; title or position, if known)

———
(Signature(s))

This form should be delivered or mailed to the Attorney General's office in Salem, or the district attorney's office in the county courthouse.

(2) Promptly upon receipt of such a petition, the Attorney General or district attorney shall notify the public body involved. The public body shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Attorney General, together with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the consent of the Attorney General, the public body may instead disclose the nature or substance of the public record to the Attorney General.
[1973 c.794 s.10]

192.480 Procedure to review denial by elected official of right to inspect public records. In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460, and the Attorney General or district attorney may upon request serve or decline to serve, in his discretion, as counsel in such suit for an elected official for which he ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed.
[1973 c.794 s.8]

192.490 Court authority in reviewing action denying right to inspect public

records; docketing; costs and attorney fees. (1) In any suit filed under ORS 192.450, 192.460, 192.470 or 192.480, the court has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(2) Except as to causes the court considers of greater importance, proceedings arising under ORS 192.450, 192.460, 192.470 or 192.480 take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(3) If a person seeking the right to inspect or to receive a copy of a public record prevails in the suit, he shall be awarded his costs and disbursements and reasonable attorney fees. If the person prevails in part, the court may in its discretion award him his costs and disbursements and reasonable attorney fees, or an appropriate portion thereof. If the state agency failed to comply with the Attorney General's order in full and did not issue a notice of intention to institute proceedings pursuant to subsection (2) of ORS 192.450 within seven days after issuance of the order, or did not institute the proceedings within seven days after issuance of the notice, the petitioner shall be awarded his costs of suit at the trial level including reasonable attorney fees regardless of which party instituted the suit and regardless of which party prevailed therein.
[1973 c.794 s.9; 1975 c.308 s.3]

192.500 Public records exempt from disclosure. (1) The following public records are exempt from disclosure under ORS 192.410 to 192.500 unless the public interest requires disclosure in the particular instance:

(a) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of an investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases;

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this paragraph shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(f) Information relating to the appraisal of real estate prior to its acquisition;

(g) The names and signatures of employes who sign authorization cards or petitions for the purpose of requesting representation or decertification elections; and

(h) Investigatory information relating to any complaint filed under ORS 659.040 or 659.045, until such time as the complaint is resolved under ORS 659.050, or a final administrative determination is made under ORS 659.060.

(2) The following public records are exempt from disclosure under ORS 192.410 to 192.500:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employes of public bodies clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Information or records of the Corrections Division, including the State Board of Parole, to the extent that disclosure thereof would interfere with the rehabilitation of a person in custody of the division or substantially prejudice or prevent the carrying out of the functions of the division, if the public interest in confidentiality clearly outweighs the public interest in disclosure;

(e) Records, reports and other information received or compiled by the Superintendent of Banks in his administration of ORS chapters 723, 724, 725 and 726, not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employes and customers in preserving the confidentiality of such information outweighs the public interest in disclosure;

(f) Reports made to or filed with the court under ORS 137.075 or 137.530;

(g) Any public records or information the disclosure of which is prohibited by federal law or regulations;

(h) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ORS 1.440, 7.211, 7.215, 41.675, 44.040, 57.850, 135.155, 146.780, 173.230, 179.495, 181.540, 306.129, 308.290, 314.835, 314.840, 336.195, 341.290, 342.850, 344.600, 346.165, 346.167, 351.065, 411.320, 416.230, 418.135, 418.770, 419.567, 432.060, 432.120, 432.425, 432.430, 469.090, 474.160, 476.090, 483.610, 656.702, 657.665, 706.720, 706.730, 715.040, 722.414, 731.264 or 744.017;

(i) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable; and

(j) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to subsection (3) of ORS 469.530.

(3) If any public record contains material which is not exempt under subsection (1), (2) or (4) of this section, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) (a) Upon application of any public body prior to convening of the 1975 regular session of the Legislative Assembly, the Governor may exempt any class of public records, in addition to the classes specified in subsection (1) of this section, from disclosure under ORS 192.410 to 192.500 unless the public interest requires disclosure in the particular instance, if he finds that the class of public records for which exemption is sought is such that unlimited public access thereto would substantially prejudice or prevent the carrying out of any public function or purpose, so that the public interest in confidentiality of such records substantially outweighs the public interest in disclosure. Such exemption from disclosure shall be limited or conditioned to the extent the Govenor finds appropriate.

(b) Prior to the granting of any exemption under this subsection the Governor shall hold a public hearing after notice as provided by ORS 183.335, or he may designate the Attorney General to hold the required hearing.

(c) Any exemption granted under this subsection shall expire June 14, 1975.

[1973 c.794 s.11; 1975 c.308 s.1; 1975 c.582 s.150; 1975 c.606 s.41a]

STATE OF OREGON

OFFICE OF THE GOVERNOR

FILED
OCT 24 1975
CLAY MYERS
SECRETARY OF STATE

18751

DEC 16 1975

RECEIVED
OCT 24 1975
CLAY MYERS
SECRETARY OF STATE

EXECUTIVE ORDER NO. EO-75-23

IN THE MATTER OF SECURITY AND PRIVACY POLICY DIRECTION FOR THE USE OF CRIMINAL OFFENDER INFORMATION MAINTAINED BY THE OREGON STATE POLICE BUREAU OF CRIMINAL IDENTIFICATION.

The above matter came on before the Governor on the 24th day of October, 1975; and

It appearing to the Governor that Chapter 786, Oregon Laws 1975 (Enrolled HB 2579) was repealed on September 16, 1975; and

It appearing to the Governor that the aforesaid Chapter 786 related to criminal justice information systems and provided certain rights and limitations relating thereto; and

It appearing to the Governor that many of the provisions of the aforesaid Chapter 786 are desirable and necessary to secure the right of privacy; and

It appearing to the Governor that many of the salutary objectives of the aforesaid Chapter 786 can be attained by the direction of the Governor, as Chief Executive of the State of Oregon, to the Superintendent of the Oregon State Police in that the Department of State Police Bureau of Criminal Identification is the central repository of all significant criminal offender information in Oregon; and

It appearing to the Governor that it is necessary to provide for a trial policy which will assist the Interim Committee on Judiciary in their deliberations towards proposed legislation for the Fifty-Ninth Legislative Assembly; and

It appearing to the Governor that it is necessary to establish a system of control of criminal offender information to fulfill Oregon's responsibility for a state plan and implementation process pursuant to Sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, and the Governor being fully advised in the premises; it is, therefore

ORDERED AND DIRECTED that the compilation, maintenance and dissemination of criminal offender information (as that term is defined by ORS 181.010(2) as amended by Chapter 548, Oregon Laws 1975) shall be governed by the provisions of this Executive Order, which shall be effective only with regard to state, as opposed to regional or local, agencies; and it is further

ORDERED AND DIRECTED that the Oregon State Police and, where necessary, the Executive Department, shall do the following in implementing ORS Chapter 181, as amended by Chapter 548, Oregon Laws 1975:

Section 1. Criminal Offender Information shall be available only to the following:

a. Criminal Justice Agencies, as defined in Section 1(9)(a) to (g) of §1 of Chapter 548, Oregon Laws 1975;

b. A Governor-designated "Criminal Justice Agency" as provided in Section 1(9)(h) of §1 of Chapter 548, Oregon Laws 1975;

c. Those persons or agencies granted access to such information pursuant to Sections 7 and 8 of Chapter 548, Oregon Laws 1975.

Section 2. The Oregon State Police shall not permanently maintain within its criminal offender information systems, information about the political, religious or social views, associations or activities of any individual, group, association, corporation, business or partnership unless such information directly relates to an investigation of past or threatened criminal acts or activities and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal acts or activities.

Section 3. Those persons or agencies undertaking research and evaluation on the effective date of this Executive Order not governed by Sections 4 and 5 of this Executive Order shall re-apply for access, following the procedure set forth in Section 4(2) of this Executive Order.

Section 4. (1) All agencies designated by the Governor, as provided in subsection (b) of Section 1 of this order, shall conform to the conditions of such designation and shall be deemed designated only after following the procedures set forth in Section 6 of this Executive Order.
(2) All agencies designated by the Governor, pursuant to subsection (b) of Section 1 of this Executive Order, prior to the effective date of this Executive Order shall, within 60 days, apply to the Criminal Records Council for redesignation consideration. Such application for redesignation shall set forth the statutory or other reference upon which that agency's need for criminal offender information is based. The Council shall advise the Governor as to whether redesignation should be granted, and, if so, under what conditions, if any. If no redesignation be granted within 90 days after the effective date of this Executive Order, designation by the Governor shall be deemed to have lapsed.

Section 5. (1) Those persons or agencies granted access to criminal offender information pursuant to subsection (c) of Section 1 of this Executive Order shall make application to the Criminal Records Council pursuant to Section 6 of this Executive Order.
(2) Those persons heretofore granted access pursuant to subsection (c) of Section 1 of this Executive Order shall re-apply for access, following the procedure set forth in Section 4(2) of this Executive Order, as appropriate.

Section 6. (1) Whenever the Governor designates a "Criminal Justice Agency" pursuant to subsection (b) of Section 1 of this Executive Order or whenever an application for access is submitted to the Superintendent of the Oregon State Police or his agent, that person shall submit such application to the Criminal Records Council for its review and comment, which action shall be completed within 45 days of submission unless the Governor or the Superintendent agrees to a longer time. Upon receipt of a recommendation from the Council, the Governor or the Superintendent, as the case may be, may grant, either with or without conditions, or deny access to criminal offender information.

(2) When the Council recommends access to criminal offender information pursuant to subsection (1) of this section, it shall:

(a) Make a specific finding of the duty and function requiring the access and a determination that the access should be granted and used exclusively for the performance of the duty and function upon which the access is based; and

(b) Recommend such conditions as may be necessary to protect the system security and individual privacy.

(3) Under departmental rules of the Oregon State Police and subsection (c) of Section 1 of this Executive Order, authorization of access to other persons or agencies by the Superintendent may be either:

(a) Access to information relating to a specific identifiable individual on a single occasion; or

(b) A general grant of access. General grants shall be for a specified period of time, not to exceed two years, and shall be required to be renewed within specified periods.

In addition to other specifications and requirements, the authorization under subsection (1) of this section shall provide for the execution of nondisclosure agreements and audits and shall specify the character of the information the Oregon State Police may provide.

(4) When the Superintendent of the Oregon State Police authorizes access to criminal offender information for research purposes pursuant to this section, the authorization shall be conditioned upon:

(a) The execution of nondisclosure agreements by all participants in the research program; and

(b) Such additional requirements and conditions, including such statements as he may find necessary to assure the protection of privacy and security interests.

Section 7. The Superintendent of the Oregon State Police may authorize temporary access to criminal offender information for criminal justice research or evaluation projects in exigent circumstances. In such cases, the Superintendent shall set forth the reasons for such temporary grant and report the same to the Council. Such projects shall be presented to the Council in accordance with Sections 5 and 6 of this Executive Order at its next regular meeting for its recommendations. No temporary grant of access shall be valid for more than 30 days or after the next regularly scheduled council meeting, whichever is longer.

Section 8. All criminal offender information distributed by the Oregon State Police shall contain a notice in writing in substantially the following language:

"All persons are advised that the information contained in this report can only be considered accurate for a period of six months from the date of this report. For accurate information, new inquiry must be made."

Section 9. (1) Each individual shall have the right to inspect the criminal offender information maintained by the Oregon State Police concerning himself. If an individual believes such information to be inaccurate or incomplete, he may request the appropriate agencies to correct it in accordance with their respective administrative rules and procedures. Requests for correction and notification to the Oregon State Police shall be in writing.
(2) The Oregon State Police may prescribe reasonable hours and places of inspection and may impose such additional restrictions, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them.
(3) The Oregon State Police shall not charge an individual for reasonable requests to provide him with a copy of criminal offender information which refers to him.

Section 10. The Criminal Records Council, created under Section 11 of this Executive Order, shall do the following in the exercise of its advisory functions:

1. Review, at the pleasure of the Governor, any proposed amendments to this Executive Order and all other executive orders relating to criminal offender information collected, processed, maintained, preserved or disseminated by the Oregon State Police;

2. Review all proposed rules of the Oregon State Police adopted pursuant to Sections 7 and 8 of Chapter 548, Oregon Laws 1975;

3. Monitor the implementation of this Executive Order and any amendment thereto;

4. Review procedures of the Oregon State Police and the Law Enforcement Data System for the physical security, completeness and accuracy of information contained in its information systems;

5. Coordinate, in cooperation with the Oregon State Police and the Law Enforcement Data System, a continuing education program for the proper use and control of criminal offender information;

6. Review procedures of the Oregon State Police for criminal record verification;

7. Review procedures of the Oregon State Police and Law Enforcement Data System for periodic audits of data and practices of criminal justice agencies in compliance with rules adopted by the Oregon State Police;

8. Review procedures of Oregon State Police and Law Enforcement Data System to limit access to criminal offender information;

9. Make such reports to the Governor on its activities and recommendations, as requested by him;

10. Review and advise the state law enforcement planning agency and the Oregon State Police in the development and implementation of Oregon's Security and Privacy Plan, pursuant to Sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973.

Section 11. (1) There is hereby established the Criminal Record Council. The Governor shall appoint to the Council nine members. No more than four members of the Council shall be officials, officers or employees of criminal justice agencies listed in subsection (a) of Section 1 of this Executive Order.

(2) In appointing members to the Criminal Record Council the Governor shall attempt as far as possible to provide representation from the general public, the news media, state and local government and criminal justice agencies.

(3) The term of office of each member is four years. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment, but no person shall be eligible to serve more than two consecutive terms. In case of a vacancy for any cause, the Governor shall appoint a person to fill the office for the unexpired term.

(4) The Criminal Record Council shall advise and assist the Governor in performing the duties imposed by Section 10 of this Executive Order.

(5) Notwithstanding the term of office specified in subsection (1) of this Executive Order, of the members first appointed to the Council:

(a) Three shall serve for terms ending June 30, 1977. They are:

Ken Johnson, Salem
Gene Daugherty, Salem
Martin Sells, St. Helens

(b) Three shall serve for terms ending June 30, 1978. They are:

Don Newell, Beaverton
Roger Wallingford, Portland
Gary Conkling, Astoria

(c) Three shall serve for terms ending June 30, 1979. They are:

Freddye Petett, Portland
Dave Smedema, Corvallis
Roz Slovic, Eugene

Section 12. In the event the Oregon State Police discovers there has been an erroneous entry in criminal offender information records maintained by it, it shall make reasonable efforts to notify any recipient person or agency known to have received such information within a reasonable period preceding discovery of the error, of the fact of such error and of the correct information.

Section 13. The Oregon State Police shall promulgate and adopt administrative rules under Chapter 183, Oregon Revised Statutes, to assure compliance with the objectives of this Executive Order in providing the best possible security and accuracy of criminal offender information.

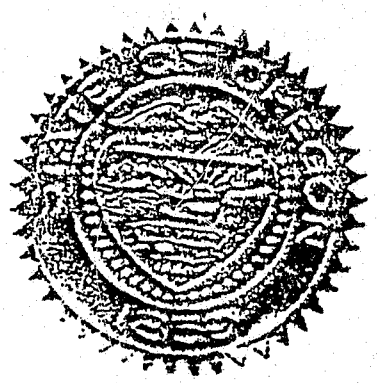
Section 14. The provisions of this Executive Order shall be in full force and effect as of January 1, 1976.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the State of Oregon to be hereunto affixed this 24th day of October, 1975.

Governor

ATTEST:

Secretary of State



CHAPTER 16.—IDENTIFICATION OF CRIMINALS

§ 1401. State police to procure and file photographs, etc.

From and after the passage of this act, the Pennsylvania State Police shall continue to procure and file for record photographs, pictures, descriptions, fingerprints, and such other information as may be pertinent, of all persons who have been, or may hereafter be, convicted of crime within this Commonwealth, and also of all well-known and habitual criminals wherever they may be procured. 1927, April 27, P.L. 414, § 1; 1937, June 29, P.L. 2433, § 2; 1943, April 28, P.L. 119, § 2.

§ 1402. Authorities in penal institutions to furnish information

It shall be the duty of the persons in charge of any State penal institution, or of any jail, prison, or workhouse within this Commonwealth, to furnish to the Pennsylvania State Police, upon request, the fingerprints, photographs, and description of any person detained in such institution, jail, prison, or workhouse. 1927, April 27, P.L. 414, § 2; 1937, June 29, P.L. 2433, § 2; 1943, April 28, P.L. 119, § 2.

§ 1403. Fingerprints or photographs of criminals; copies to state police; duties of state police

The Pennsylvania State Police, the persons in charge of State penal institutions, the wardens or keepers of jails, prisons, and workhouses within this Commonwealth, and all police officers within the several political subdivisions of this Commonwealth, shall have the authority to take, or cause to be taken, the fingerprints or photographs of any person in custody, charged with the commission of crime, or who they have reason to believe is a fugitive from justice or a habitual criminal, except persons charged with a violation of "The Vehicle Code" which is punishable upon conviction in a summary proceeding unless they have reason to believe the person is a fugitive from justice or a habitual criminal; and it shall be the duty of the chiefs of bureaus of all cities within this Commonwealth to furnish daily, to the Pennsylvania State Police, copies of the fingerprints and, if possible, photographs, of all persons arrested within their jurisdiction charged with the commission of felony, or who they have reason to believe are fugitives from justice or habitual criminals, such fingerprints to be taken on forms furnished or approved by the Pennsylvania State Police. It shall be the duty of the Pennsylvania

State Police, immediately upon the receipt of such records, to compare them with those already in their files, and, if they find that any person arrested has a previous criminal record or is a fugitive from justice, forthwith to inform the arresting officer, or the officer having the prisoner in charge, of such fact. 1927, April 27, P.L. 414, § 3; 1937, June 29, P.L. 2433, § 2; 1943, April 28, P.L. 119, § 2; 1961, July 13, P.L. 589, § 1.

§ 1404. State police to cooperate with other agencies for criminal identification

It shall be the duty of the Pennsylvania State Police to cooperate with agencies of other States and of the United States, having similar powers, to develop and carry on a complete interstate, national, and international system of criminal identification and investigation, and also to furnish, upon request, any information in its possession concerning any person charged with crime to any court, district attorney, or police officer of this Commonwealth, or of another state or of the United States. 1927, April 27, P.L. 414, § 4; 1937, June 29, P.L. 2433, § 2; 1943, April 28, P.L. 119, § 2.

§ 1405. District attorneys to employ fingerprint experts; compensation; files of fingerprints

(a) The district attorneys of the several counties are hereby authorized and empowered, from time to time, to employ the services of experts on fingerprints to assist them in the investigation of pending cases and to testify upon the trial thereof. The compensation of any such expert shall be fixed by the district attorney employing him, with the approval of the court of quarter sessions, and shall be paid from the county treasury upon warrant of the county commissioners in the usual manner.

(b) The district attorney of any county, the warden or keeper of the county jail, or any expert employed by the district attorney, or any other person designated by the district attorney, shall have the power, upon the written order of the district attorney, to take the fingerprints of any persons confined in the county jail of such county for use in the identification of the prisoner or upon his trial.

(c) The district attorneys of the several counties shall keep and arrange files of the fingerprints, taken under the provisions of this act, of persons convicted of crime and shall destroy the fingerprints of all persons acquitted. The files of fingerprints maintained by the district attorneys shall be open to the inspection of any other district attorney of

this Commonwealth, or their representatives, or of the Pennsylvania State Police, or any sheriff or police or peace officer.

(d) District attorneys shall not be authorized to take fingerprints, under this section, of persons arrested for misdemeanors, unless the district attorneys have reason to believe that such persons are old offenders against the penal laws of this Commonwealth. 1927, April 27, P.L. 414, § 5; 1937, June 29, P.L. 2433, § 2; 1943, P.L. 119, § 2.

§ 1406. Refusal to make reports; destruction of police records; penalties

Neglect or refusal of any person mentioned in this act to make the report required herein, or to do or perform any other act on his part to be done or performed in connection with the operation of this act, shall constitute a misdemeanor, and such person shall, upon conviction thereof, be punished by a fine of not less than five nor more than twenty-five dollars, or by imprisonment in the county jail for a period of not exceeding thirty days, or by both, in the discretion of the court. Such neglect or refusal shall also constitute malfeasance in office and subject such person to removal from office. Any person who removes, destroys, or mutilates any of the records of the Pennsylvania State Police, or of any district attorney, shall be guilty of a misdemeanor,[1] and such person shall, upon conviction thereof, be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail for a period of not exceeding one year, or by both, in the discretion of the court. 1927, April 27, P.L. 414, § 6; 1937, June 29, P.L. 2433, § 2; 1943, April 28, P.L. 119, § 2.

[1] Enrolled bill reads "misdeameanor".

§ 11. Wardens to record description of felons

In every prison in this state, to which persons convicted of any felonious offense are, or may be, committed by the courts of this state, the warden, or other officer in charge, shall record, or cause to be recorded, in a register to be kept for that purpose, a description of every person committed to such prison under sentence for a felony, and also the criminal history of every person so committed, so far as the same may appear from the records of the court of this state, or of any other state, or otherwise, as full and complete as may be obtainable, and shall attach thereto a photograph or photographs of such person so recorded. 1889, May 7, P.L. 103, § 1.

§ 12. District attorney to furnish criminal history of felon

For the purpose mentioned in section one of this act,[1] the district attorney of the district in which a criminal has been convicted and sentenced to prison for a felony, shall foward to the warden or other officer, at the request of such warden or other officer in charge, and upon blanks furnished by him, a criminal history of such criminal, as fully as is known or can be ascertained by such district attorney. 1889, May 7, P.L. 103, § 2.

[1] Section 11 of this title.

§ 13. Record to be kept for purposes of identification

The register herein provided for shall not be made public, except as may be necessary in the identification of persons accused of crime, and in their trial for offenses committed after having been imprisoned for a prior offense. The record shall be accessible, however, to any officer of any court, having criminal jurisdiction in this state, upon the order of the judge of the court or the district attorney of the district in which the person is being held for a crime, which said order shall be attested by the seal of the court, and such record may be offered in evidence upon any trial of an offender, for the purpose of proving a former imprisonment or imprisonments, and the offense or offenses for which imprisoned. 1889, May 7, P.L. 103, § 3.

§ 14. Wardens to adopt Bertillon method of measurement

For the purpose of obtaining accurate descriptions of convicts, the wardens or other officers in charge of the several prisons in the state are hereby authorized to adopt what is known as the Bertillon method of measurements and registration, or such other method as shall minutely describe convicts. 1889, May 7, P.L. 103, § 4.

§ 15. To whom copies of description shall be furnished

A copy of the description, of the history, and of the photograph or photographs of any convict entered upon such register, shall be furnished upon request of any warden or other officer in charge of a prison for felons in any other state of the United States, to such warden or other officer in charge: Provided, Such state has made provision by law for recording the descriptions of its convicts, and for furnishing such descriptions to the authorities of such other states as have made provisions by law for the keeping of registers of descriptions and histories of their convicts. 1889, May 7, P.L. 103, § 5.

§ 16. Copies to be furnished to bureaus of police

A copy of the description, history, and photograph or photographs of any convict entered upon such records, shall be furnished to any officer of the bureau of police in cities where state penitentiaries are located, upon the order of the superintendent of police thereof. Also, that on or before the twenty-eighth day of each and every month, the warden of said state penitentiaries, located in said cities, shall furnish the superintendent of police of said cities the names of convicts whose sentences expire the following month, together with the date when sentence commenced, the county from which committed, the crime for which convicted, and the exact date when convict will be discharged. 1889, May 7, P.L. 103, § 6.

§ 66.1 Definitions

In this act[1] the following terms shall have the following meanings:

(1) "Agency." Any department, board or commission of the executive branch of the Commonwealth, any political subdivision of the Commonwealth, the Pennsylvania Turnpike Commission, or any State or municipal authority or similar organization created by or pursuant to a statute which declares in substance that such organization performs or has for its purpose the performance of an essential governmental function.

(2) "Public Record." Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided, That the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; it shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, excepting therefrom however the record of any conviction for any criminal act.
As amended 1971, June 17, P.L. 160, No. 9, § 1.

§ 66.2 Examination and inspection

Every public record of an agency shall, at reasonable times, be open for examination and inspection by any citizen of the Commonwealth of Pennsylvania. 1957, June 21, P.L. 390, § 2.

§ 66.3 Extracts, copies, photographs or photostats

Any citizen of the Commonwealth of Pennsylvania shall have the right to take extracts or make copies of public records and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or his authorized deputy. The lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats. 1957, June 21, P.L. 390, § 3.

§ 66.4 Appeal from denial of right

Any citizen of the Commonwealth of Pennsylvania denied any right granted to him by section 2 or section 3 of this act,[1] may appeal from such denial to the Court of Common Pleas of Dauphin County if an agency of the Commonwealth is involved, or to the court of common pleas of the appropriate judicial district if a political subdivision or any agency thereof is involved. If such court determines that such denial was not for just and proper cause under the terms of this act, it may enter such order for disclosure as it may deem proper. 1957, June 21, P.L. 390, § 4.

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE
EXECUTIVE ORDER

SUBJECT	NUMBER
Criminal Justice Information Systems	1975-10

DATE	DISTRIBUTION	BY DIRECTION
July 24, 1975	B	Milton J. Shapp, Governor

The continued development of related yet uncoordinated criminal justice information systems cannot fully meet the needs of criminal justice agencies, nor can existing practices insure adequate protection to the right of privacy of Pennsylvania's citizens by safeguarding the confidentiality and security of the information collected. In addition, basic policy decisions must be made as to what types of data may be collected and to whom and under what conditions such data may be disseminated.

These issues have become particularly critical since Pennsylvania must now decide how to proceed with implementation of the Pennsylvania Comprehensive Data System Action Plan and determine the Commonwealth's response to recently promulgated Federal regulations governing the dissemination of criminal history record information and setting forth detailed requirements for privacy and security in criminal justice information systems. Addressing these issues will necessarily affect all segments of the criminal justice system, from police to the courts to corrections to probation and parole, at both State and local levels.

In order to deal with these issues in a meaningful and coordinated manner, I hereby establish the Governor's Task Force on Criminal Justice Information Systems and an Inter-Agency Working Group, responsible to the Task Force.

I. The Governor's Task Force on Criminal Justice Information Systems.

A. Responsibilities. The Task Force shall be responsible for:

1. Adopting policy positions on issues concerning criminal justice data systems at the State and local level.

2. Planning for and overseeing the implementation of a Pennsylvania Criminal Justice Information System which encompasses the Pennsylvania Comprehensive Data System Action Plan, including but not limited to the location, organizational placement, and administrative control of components of the Comprehensive Data System.

3. Promulgating the State Plan required by Federal Regulations governing the dissemination of criminal history record information as set forth in 28 C.F.R. §20.1 et seq.

4. Recommending to the Governor and the General Assembly needed legislation concerning criminal justice information systems, especially with regard to the safeguards necessary to insure the security and privacy of the information collected.

B. Composition.

1. The Task Force shall be composed of the following members:

The Lieutenant Governor, who shall serve as chairperson of the Task Force
The Attorney General
The Commissioner of the Pennsylvania State Police
The Counsel to the Governor
The State Court Administrator

2. At the discretion of the Lieutenant Governor, a member of the Task Force may authorize another person to act as such member's designee at meetings which such member cannot attend.

C. Staff Support. Staff support for the Task Force, as determined by the Lieutenant Governor, shall be provided by the Department of Justice, the Pennsylvania State Police, the Governor's Justice Commission, the Office of Administration, the Inter-Agency Working Group, and from grants made available to the Task Force by the Federal Government. The Lieutenant Governor shall appoint a Task Force Director who shall direct the work of the staff made available to the Task Force.

D. An Advisory Council, numbering not more than 21 nor less than 15, will be established by the Task Force to act in an advisory capacity to the Inter-Agency Working Group. Members shall include, but not be limited to, representatives of the following groups: police, courts, corrections, law, probation and parole, and private citizens. Members of this Advisory Council may attend Working Group meetings as guests, may serve on Sub-Committees of the Working Group as requested, and may be called upon by the Working Group or the Task Force for technical expertise. The Advisory Council will be specifically involved in the area of data security, privacy, and confidentiality.

II. Inter-Agency Working Group.

A. The Inter-Agency Working Group is to be composed of representatives of the following agencies:

- The Pennsylvania State Police
- The Pennsylvania Board of Probation and Parole
- The Office of the State Court Administrator
- The Bureau of Correction, Department of Justice
- The Governor's Justice Commission, Office of Criminal Justice Statistics
- Governor's Task Force on Criminal Justice Information Systems

B. The Task Force Director shall be chairperson and a member of the Working Group.

C. The Working Group shall function under the direction of the chairperson and shall call upon the Task Force staff for support as needed.

D. Responsibilities. The purpose of the Working Group shall be to:

1. Develop, coordinate, and implement a Criminal Justice Information System (CJIS) to meet the criminal justice data needs of the Commonwealth.

2. Provide a forum for communication and information exchange among members of various criminal justice agencies.

3. Provide the means, through the Advisory Council established pursuant to paragraph I(D), above, by which all users and suppliers of criminal justice information can participate in the Pennsylvania CJIS.

4. Review and make recommendations to the Task Force as to areas for legislative action necessary to promote the effective development of the Pennsylvania CJIS.

5. Develop and make recommendations to the Task Force as to a system to insure security, privacy, and confidentiality of the data in the Pennsylvania CJIS.

6. Draft and submit to the Task Force for approval and promulgation, the State Plan required by Federal Regulations governing the dissemination of criminal history record information as set forth in 28 C.F.R. §20.1 et seq.

7. Structure the procedures used to collect, retain, and report criminal justice information. The Working Group shall have the authority, absent contrary action by the Task Force, to approve the implementation of all criminal justice information systems and coordinate the efforts of appropriate agencies at the State and local level.

8. Review all plans and subgrant applications submitted to the Governor's Justice Commission for criminal justice information systems prior to Commission action and advise the Commission with regard thereto.

9. Review and evaluate existing and proposed criminal justice information systems to assure the adherence to the minimum standards to be established for data collection for the Pennsylvania CJIS.

10. Replace and assume the responsibilities of the Committee for the Coordination of Criminal Justice System Data Needs, as described in the Pennsylvania Comprehensive Data System Action Plan as approved by the Federal Law Enforcement Assistance Administration.

III. Cooperation by Agencies of Government. All Commonwealth agencies under my jurisdiction are directed to fully cooperate with the efforts of the Governor's Task Force on Criminal Justice Information Systems and the Inter-Agency Working Group. Commonwealth agencies shall provide such assistance and information as the Task Force and the Working Group may require. Other agencies of Government, both State and local, are requested to fully cooperate with the Task Force and the Working Group so that they may perform their functions effectively.

§ 2404. Penalty for possession, conditional discharge and expunging of records for first offense

(a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance, unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this chapter.

Any person who violates this subsection shall incur in a felony and upon conviction thereof shall be sentenced to a term of imprisonment of not less than 1 year nor more than 5 years and may also be fined for not more than $5,000. If such person commits such offense after a prior conviction or convictions under this subsection have become final, he shall incur in a felony and upon conviction thereof shall be sentenced to a term of imprisonment of not less than 2 years nor more than 10 years and he may also be fined for not more than $10,000.

(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this chapter, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty, and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed three [five] years, as the court may prescribe.

Upon violation of a condition of the probation, the court may leave without effect the probation and proceed to render judgment.

If during the period of his probation such person does not violate any of the conditions of the probation, the court may, in the exercise of its discretion and upon the previous holding of a hearing, acquit said person and dismiss the proceedings against him. The discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the court solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection.

Such discharge and dismissal of the case shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law on any person convicted for any offense, including the punishment prescribed hereunder for subsequent convictions and the person so acquitted shall be entitled to have the Police Superintendent return to him any fingerprint records and photographs in the possession of the Police of Puerto Rico, taken in connection with the violation of this section. Discharge and dismissal under this section may occur only once with respect to any person. —June 23, 1971, No. 4, p. 526, § 404, eff. June 23, 1971; amended May 31, 1972, No. 64, p. 139, § 1, eff. May 31, 1972.

§ 2517. Fingerprints and photographs

The Police Superintendent or his authorized agent shall fingerprint and photograph any person who violates any provision of this chapter punishable as a felony or who is declared addicted to narcotic drugs in conformity with the provisions of this chapter and any such person comprised in this section who fails or refuses to present himself for such purpose or who furnishes incomplete or false information as required under this chapter, or who refuses to be fingerprinted or photographed, shall be guilty of a misdemeanor and punished by a fine of not more than one thousand (1,000) nor less than two hundred (200) dollars, or imprisonment in jail for a term of not more than two (2) years nor less than three (3) months or both penalties in the discretion of the court.—June 23, 1971, No. 4, p. 526, § 517, eff. 180 days after June 23, 1971.

§ 2518. Courts shall send copies of sentence

The court clerk where a person is found guilty or exonerated for violation of the provisions of this chapter shall send to the Secretary of Health and to the Police Superintendent a certified copy of the sentence.—June 23, 1971, No. 4, p. 526, § 518, eff. 180 days after June 23, 1971.

Chapter 119. Elimination of Convictions of Misdemeanors From Criminal Record

§ 1731. Procedure; circumstances

Any person convicted of a misdemeanor may request and obtain an order from the District Court of Puerto Rico so that said convictions be eliminated from his criminal record, provided that the following circumstances concur in the case:

(a) That the offenses for which he was convicted do not imply moral turpitude.

(b) That five (5) years have elapsed since the last conviction and during that time he has not committed any offense. When the term elapsed is ten (10) years or more, said convictions may be eliminated by the Police Superintendent at the request of the interested party through a sworn declaration accompanied by an Internal-Revenue voucher for the sum of $5.00.

If the petition is denied by the Superintendent, the interested party may appear before the corresponding District Court by filing an original petition.

For the purposes of this subsection, the only violations of the Vehicle and Traffic Law which shall be considered as an offense, shall be convictions for leaving the scene of an accident without complying with provisions of section 781 of Title 9, or convictions for reckless imprudence or negligence in accordance with the provisions of section 871 of Title 9, or convictions for driving a motor vehicle under the influence of intoxicating liquors pursuant to sections 1041 and 1042 of Title 9.

(c) That he has a good moral reputation in the community.—June 21, 1968, No. 108, p. 218, § 1, eff. June 21, 1968.

—Amended June 22, 1971, No. 58, p. 188, § 1, eff. June 22, 1971; July 1, 1975, No. 137, p. 419, § 1, eff. July 1, 1975.

12-1-4. Division of criminal identification—Chief and assistants.—There shall be a division of criminal identification in the department of the attorney-general to be in charge of a chief who shall be appointed by the attorney-general to serve at the pleasure of the attorney-general, and who shall devote all his time to the duties of his office. The said chief with the approval of the attorney-general may appoint such assistants as he may deem necessary to carry out the work of the division, within the limits of any appropriation made for such purpose, and may with the approval of the attorney-general discontinue the employment of any such assistants at any time. Said chief shall perform the functions required by §§ 12-1-5 to 12-1-12, inclusive.

History of Section.

G. L., ch. 135, § 1, as enacted by P. L. 1927, ch. 977, § 1; P. L. 1935, ch. 2250, § 31; G. L. 1938, ch. 620, § 1; impl. am. P. L. 1939, ch. 660, § 40; G. L. 1956, § 12-1-4.

Cross-Reference.

Department of attorney-general, §§ 42-9-1 to 42-9-17.

Comparative Legislation.

Criminal identification divisions:
Conn. Gen. Stat. 1958, §§ 29-10—29-17.
Mass. Laws Ann., ch. 147, § 4A.

12-1-5. Office space of division.—The division shall have suitable offices in the Providence county courthouse assigned to it by the director of administration.

History of Section.

G. L., ch. 135, § 7, as enacted by P. L. 1927, ch. 977, § 1; G. L. 1938, ch. 620, § 8; impl. am. P. L. 1951, ch. 2727, art. 1, § 2; G. L. 1956, § 12-1-5.

12-1-6. Appropriations for division.—The general assembly shall annually appropriate such sum as it may deem necessary for the salaries of the chief and his assistants and for the expenses of maintaining the division in accordance with the provisions of this chapter.

History of Section.

G. L., ch. 135, § 8, as enacted by P. L. 1927, ch. 977, § 1; P. L. 1935, ch. 2250, § 149; G. L. 1938, ch. 620, § 9; G. L. 1956, § 12-1-6.

12-1-7. Criminal identification records—Stolen property reports.—It shall be the duty of the attorney-general to procure and file for record in the office of his department so far as the same can be procured, fingerprints, plates, photos, outline pictures, descriptions, information and measurements of all persons who shall be or shall have been convicted of felony, or imprisoned for violating any of the military, naval or criminal laws of the United States or of any state, and of all well-known and habitual criminals from wherever procurable. He shall procure and keep on file in the office of said department, so far as the same can be procured, fingerprints, measurements, processes, operations, signalletic cards, plates, photographs, outline pictures, measurements and descriptions of any person who shall have been or shall be confined in any penal institution of this state, taken in accordance with the system of identification in use in any such institution. He shall also keep on file in said office the reports of lost, stolen, found, pledged or pawned property required to be furnished to him under the provisions of § 12-1-10.

12-1-8. Methods of identification.—The department may use any of the following systems of identification: the Bertillon, the finger-print system and any system of measurement that may be adopted by law in the various penal institutions of the state.

12-1-9. Assistance to state and local police in fingerprint identification—Enforcement powers—Co-operation with federal bureau and other states.—Whenever requested by the superintendent of state police or by any superintendent or chief of police or town sergeant of any city or town, the attorney-general may assist such police officials as a criminal investigator in all criminal investigations involving identification by fingerprints. The attorney-general shall have and may exercise in any part of the state with regard to the enforcement of the criminal laws, all powers of sheriffs, deputy sheriffs, town sergeants, chiefs of police, members of the division of state police, police officers and constables. The attorney-general may send or cause to be sent to any state or national bureau of identification established for the purpose of exchanging information, according to the method of identification by fingerprint, or to any police department, whether within or without the state, the descriptions of any person who may have been fingerprinted in this state.

12-1-10. Duty of police officials to furnish fingerprints and stolen property lists.—It shall be the duty of the superintendent of state police and of the superintendents or chiefs of police or town sergeants of each city or town, hereinafter referred to as police officials, to promptly furnish to the attorney-general fingerprints and descriptions of all persons arrested, who, in the judgment of such police officials, are persons wanted for serious crimes, or who are fugitives from justice, and of all persons in whose possession at the time of arrest are found goods or property reasonably believed by such police officials to have been stolen by such persons; and of all persons in whose possession are found burglar outfits or tools or keys or who have in their possession explosives reasonably believed to have been used or to be used for unlawful purposes, or who are in possession of infernal machines, bombs, or other contrivances in whole or in part and reasonably believed by said police officials to have been used or to be used for unlawful purposes, and of all persons who carry concealed firearms or other deadly weapons reasonably believed to be carried for unlawful purposes or who have in their possession inks, dye, paper or other articles necessary in the making of counterfeit bank notes, or in the alteration of bank notes; or dies, molds or other articles necessary in the making of counterfeit money, and reasonably believed to have been used or to be used by such persons for such unlawful purposes. This section is not intended to include violators of city or town ordinances or of persons arrested for similar minor offenses. It is also made the duty of said police officials to furnish said department daily copies of the reports received by their respective offices of lost, stolen, found, pledged or pawned property.

12-1-11. Photographs and descriptive information as to persons convicted.—In the case of every offense for which an indictment has been found or an information filed and in which the offender has been found guilty and sentenced, or has pleaded guilty or nolo, the attorney-general shall cause to be taken a photograph, and the name, age, weight, height, and a general description of such offender, and his fingerprints in accordance with the fingerprint system of identification of criminals and a history of the offender as shown upon trial. In the case of all offenses triable in the superior court for the counties of Providence and Bristol the attorney-general shall cause such fingerprints, photograph and other information to be taken by his department and in the case of all offenses triable in any other county he may make such arrangements for the taking of such fingerprints, photographs and information as may to him seem most desirable. In the case of offenses other than those that are indictable, for which an offender is committed under a sentence of imprisonment for a period of six (6) months or more, the warden or keeper of a place of detention or penal institution other than institutions designed primarily for the detention of juveniles, to which an offender is committed, shall cause to be taken, unless the court otherwise orders, a like description, photograph, fingerprints and history of such person. Such description, photographs, fingerprints and history shall be taken by persons in the service of the state appointed by the attorney-general for that purpose. All such descriptions, photographs, fingerprints and identifying matter shall be transmitted forthwith to the attorney-general.

History of Section.
G. L., ch. 135, § 6, as enacted by P. L. 1927, ch. 977, § 1; P. L. 1928, ch. 1191, § 1; G. L. 1938, ch. 620, § 6; impl. am. P. L. 1939, ch. 660, § 40; G. L. 1956, § 12-1-11; P. L. 1974, ch. 118, § 9.

12-1-12. Destruction of records of persons acquitted.—Any fingerprint, photograph, physical measurements or other record of identification, heretofore or hereafter taken by or under the direction of the attorney general, the superintendent of state police, the member or members of the police department of any city or town or any other officer authorized by this chapter to take the same, of a person under arrest, prior to the final conviction of such person for the offense then charged, shall be destroyed by the officer or department having the custody or possession thereof within forty-five (45) days after said acquittal or other exoneration if such person is acquitted or otherwise exonerated from the offense with which he is charged, provided, that such person shall not have been previously convicted of any offense involving moral turpitude. Any person who shall violate any provision of this section shall be fined not exceeding one hundred dollars ($100).

History of Section.
P. L. 1911, ch. 719, §§ 1, 2; G. L. 1923, ch. 135, §§ 1, 2; G. L., ch. 135, § 9, as enacted by P. L. 1927, ch. 977, § 1; G. L. 1938, ch. 620, § 7; impl. am. P. L. 1939, ch. 660, § 40; G. L. 1956, § 12-1-12; P. L. 1975, ch. 285, § 1.

12-1-13. Removal and destruction of records subsequent to conviction for misdemeanor.—Any fingerprint, photograph, physical measurements or other record of identification, heretofore or hereafter taken by or under the direction of the attorney-general, the superintendent of state police, the member or members of the police department of any city or town, or any other officer authorized by this chapter to take the same, of a person charged with a misdemeanor, prior to the final conviction and subsequent to conviction of such person for such misdemeanor, shall be destroyed by the officer or department having the custody or possession thereof upon demand of the person so photographed, measured or otherwise identified, provided, that such person has no record of conviction of a felony, and provided that such person has successfully completed any sentence or probationary period imposed upon him in connection with such misdemeanor and has not been charged with or convicted of any other crime for a period of five (5) years from the date of completion of such sentence or probationary period, and further provided that such person was not originally charged with a felony or a misdemeanor carrying as a possible penalty a fine of more than five hundred dollars ($500) or a penalty of one (1) year or more which charge was reduced to a lesser offense.

For all intents and purposes, the destruction of the aforementioned conviction shall operate and have the same effect and force in any and every situation and case as though no such arrest, arraignment or conviction ever occurred or took place.

The court in which such conviction took place shall, if any person shall refuse to carry out any of the [provisions] of this section, upon petition under oath setting forth sufficient facts to warrant such destruction of records, assign said petition for hearing within ten (10) days provided at least five (5) days notice of such hearing is given to the person having custody of such record by mailing him a copy of said petition with the time, date and place of hearing endorsed thereon.

If the court finds that the petitioner is entitled to relief, it shall order such destruction as provided herein.

History of Section.
As enacted by P. L. 1976, ch. 71, § 1.

Compiler's Notes.
The bracketed word was substituted for "provision."

§ 17–1–40. After discharge, dismissal or finding of innocence, criminal records must be destroyed.

Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law-enforcement agency.

HISTORY: 1962 Code § 17-4; 1973 (58) 637.

§ 23–1–90. Reports of arrests in counties containing cities or towns of over 5,000.

Each rural policeman, deputy sheriff, constable or other peace officer within any county containing a city or town of five thousand inhabitants or more in this State shall make and file with the county supervisor each month a verified report of all arrests made by him, the name of the party arrested, together with the offense charged, and the name of the magistrate to whom the case was referred for trial or preliminary hearing. The county supervisor shall not pay any salary to any rural policeman, deputy sheriff, constable or other peace officer until such officer has made and filed the verified report herein required. And further, in default thereof, such rural policeman, deputy sheriff, constable or other peace officer violating the provisions of this section shall, on conviction, be liable to a fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding two months, at the discretion of the court.

HISTORY: 1962 Code § 53-7; 1952 Code § 53-7; 1942 Code § 3790; 1932 Code §§ 3790, 3791; Civ. C. '22 §§ 2096, 2097; 1917 (30) 111; 1927 (35) 286.

§ 23–3–40. Certain fingerprints shall be made available to State Law-Enforcement Division.

All sheriff's and police departments in South Carolina shall make available to the Criminal Justice Records Division of the State Law-Enforcement Division for the purpose of recordation and classification all fingerprints taken in criminal investigations resulting in convictions. The State Law-Enforcement Division shall pay for the costs of such program and prepare the necessary regulations and instructions for the implementation of this section.

HISTORY: 1962 Code § 53-35; 1971 (57) 998.

ARTICLE 3

CRIMINAL INFORMATION AND COMMUNICATION SYSTEM

SEC.

§ 23–3–110. Creation and functions of statewide criminal information and communication system.

There is hereby established as a department within the State Law Enforcement Division a statewide criminal information and communication system, hereinafter referred to in this article as "the system," with such functions as the Division may assign to it and with such authority, in addition to existing authority vested in the Division, as is prescribed in this article.

HISTORY: 1962 Code § 53-30; 1970 (56) 2415.

§ 23–3–120. Reports of criminal data by law-enforcement agencies and court officials.

All law-enforcement agencies and court officials shall report to the system all criminal data within their respective jurisdictions and such information related thereto at such times and in such form as the system through the State Law Enforcement Division may require.

HISTORY: 1962 Code § 53-31; 1970 (56) 2415.

§ 23–3–130. Determination of information to be supplied and methods of evaluation and dissemination; promulgation of rules and regulations.

The State Law Enforcement Division is authorized to determine the specific information to be supplied by the law-enforcement agencies and court officials pursuant to § 23–3–120, and the methods by which such information shall be compiled, evaluated and disseminated. The State Law Enforcement Division is further authorized to promulgate rules and regulations to carry out the provisions of this article.

HISTORY: 1962 Code § 53-32; 1970 (56) 2415.

§ 23–3–140. Disclosure of information in violation of law is not authorized.

The provisions of this article shall not be construed to require or permit the disclosure or reporting of any information in the manner prohibited by existing law.

HISTORY: 1962 Code § 53-33; 1970 (56) 2415.

§ 23–3–150. Grants and appropriations; contracts with public agencies.

The State Law Enforcement Division is authorized to accept, on behalf of the State, and use in the establishment, expansion and improvement of the system, funds in the nature of grants or appropriations from the State, the United States, or any agency thereof, and may contract with any public agency for use of the system in the furtherance of effective law enforcement.

HISTORY: 1962 Code § 53-34; 1970 (56) 2415.

§ 23–23–10. Declaration of purpose; construction; definitions.

(A) In order to insure the public safety and general welfare of the people of this State, and to promote equity for all segments of society, a program of training for law-enforcement officers and other persons employed in the criminal justice system in this State is hereby proclaimed and this article shall be interpreted so as to achieve such purposes principally through the establishment of minimum standards in law-enforcement selection and training.

(B) It is the intent of this article to encourage all law-enforcement officers, departments and agencies within this State to adopt standards which are higher than the minimum standards implemented pursuant to this article, and such minimum standards shall in no way be deemed sufficient or adequate in those cases where higher standards have been adopted or proposed. Nothing herein shall be construed to preclude an employing agency from establishing qualifications and standards for hiring or training law-enforcement officers which exceed the minimum standards set by the council, hereinafter created, nor shall anything herein be construed to affect any sheriff, constable or other law-enforcement officer elected under the provisions of the Constitution of the State of South Carolina.

(C) It is the intent of the legislature in creating a facility and a governing council to maximize training opportunities for law-enforcement officers and criminal justice personnel, to coordinate training, and to set standards for the law enforcement and criminal justice service, all of which are imperative to upgrading law enforcement to professional status.

(D) Whenever used in this article, and for the purposes of this article, unless the context clearly denotes otherwise:

(1) The term *"law-enforcement officer"* shall mean an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

(2) The term *"Council"* shall mean the Law Enforcement Training Council created by this article.

HISTORY: 1962 Code § 53-41; 1970 (56) 2564.

§ 23–23–30. Creation, membership, meetings and compensation of members of South Carolina Law Enforcement Training Council.

(A) There is hereby created a South Carolina Law Enforcement Training Council consisting of the following twelve members:

(1) The Attorney General of South Carolina.

(2) The chief of the South Carolina Law Enforcement Division.

(3) The commanding officer of the South Carolina Highway Patrol.

(4) The Executive Director of the South Carolina Wildlife and Marine Resources Department.

(5) The Commissioner of the South Carolina Department of Corrections.

(6) The dean of the University of South Carolina School of Law.

(7) One chief of police from a municipality having a population of less than ten thousand; this person to be appointed by the Governor for a term of four years.

(8) One chief of police from a municipality having a population of more than ten thousand; this person to be appointed by the Governor for a term of four years.

(9) One county sheriff engaged in full-time performance of duties as a law-enforcement officer; this person to be appointed by the Governor for a term of four years.

(10) One person employed in the administration of any municipality or holding a municipal elective office; this person to be appointed by the Governor for a term of four years.

(11) One person employed in the administration of county government or elected to a county governing body; this person to be appointed by the Governor for a term of four years.

(12) The special agent in charge of the Federal Bureau of Investigation, Columbia Division.

(B) (1) The members provided for in (1) through (6) above shall be ex officio members with full voting rights.

(2) The members provided for in (7) through (11) above shall serve terms as stipulated beginning with July 1, 1970.

In the event that a vacancy arises it shall be filled for the remainder of the term by appointment by the Governor on the basis of the above-mentioned criteria.

(C) This Council shall meet for the first time within ninety days after July 1, 1970, and shall then elect one of its members as chairman and one as vice-chairman; these shall serve a term of one year in such capacity and may be reelected. After the initial meeting, the Council shall meet at the call of the chairman or at the call of a majority of the members of the Council, but it shall meet no fewer than four times each year. The Council shall establish its own procedures with respect to quorum, place and conduct of meetings.

(D) Members of the Council shall serve without compensation.

(E) Any Council member who terminates his holding of the office or employment which qualified him for appointment shall immediately cease to be a member of the Council; the person appointed to fill the vacancy shall do so for the unexpired term of the member whom he succeeds.

HISTORY: 1962 Code § 53-43; 1970 (56) 2564; 1971 (57) 523.

§ 23–23–40. Certain law-enforcement officers shall complete basic training requirements; exceptions.

No law-enforcement officer below the level of chief, employed or appointed on or after January 1, 1972, by any public law-enforcement agency in this State shall be empowered or authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has, within one year after his date of appointment, successfully completed the minimum basic training requirements established pursuant to this article. Should any such person fail to successfully complete such basic training requirements within one year from his date of employment, he shall not perform any of the duties of a law-enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has successfully completed such basic training requirements. He shall not be eligible for employment or appointment by any other agency in South Carolina as a law-enforcement officer, nor shall he be eligible for any compensation by any law-enforcement agency for services performed as an officer; *provided, however,* that after a lapse of two years following the date of the failure to achieve certification, the head of a local law-enforcement agency may petition the Council for reinstatement of temporary or probationary employment of such individual, such reinstatement to rest solely with the discretion of the Council. The provisions of this article shall not apply to any law-enforcement officer appointed prior to January 1, 1972, but the Council shall encourage present law-enforcement officers throughout the State to qualify themselves for certification by the Council. Exceptions to the one-year rule may be granted by the Council in these cases: (a) military leave or injury occurring during that first year which would preclude the receiving of training within the usual period of time, or (b) in the event of the filing of application for training, which application, under circumstances of time and physical limitations, cannot be honored by the training academy within the prescribed period, or (c) upon presentation of documentary evidence that the officer-candidate has successfully completed equivalent training in one of the other states which by law regulate and supervise the quality of police training and which require a minimum basic or recruit course of duration and content at least equivalent to that provided in this article or by standards set by the South Carolina Law Enforcement Training Council.

HISTORY: 1962 Code § 53-44; 1970 (56) 2564.

§ 23–23–210. Creation, purpose and branches of South Carolina Law Enforcement Training School.

There is hereby created and established a South Carolina Law Enforcement Training School, for the purpose of training law-enforcement officers and candidates for such employment in the fields of traffic, the detection of crime and the general duties of law enforcement. The school shall be divided into as many branches as there shall be judicial circuits of the State.

HISTORY: 1962 Code § 53-21; 1953 (48) 331.

§ 23–23–260. Facilities shall be afforded for in-service training.

In addition to the training offered to officer candidates, the faculty and facilities of the school shall be afforded for the in-service training of all qualified applicants designated by any county, municipality or other political subdivision, or by the State, upon application duly made to the director of the extension division of the University of South Carolina by the responsible authority of the State or such county, municipality or other political subdivision.

HISTORY: 1962 Code § 53-26; 1953 (48) 331.

§ 30–1–10. Definitions.

For the purposes of §§ 30–1–10 to 30–1–140 *"public records"* means the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used or retained by any public agency, regardless of physical form or characteristics. Records such as income tax returns, medical records, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of §§ 30–1–10 to 30–1–140, nor shall the definition of public records include those records concerning which it is shown that the public interest is best served by not disclosing them to the public; *provided, however,* if necessary, security copies of closed or restricted records may be kept in the South Carolina Department of Archives and History, with the approval of the agency or political subdivision of origin and the Director of the Department of Archives and History, and, *provided, further,* that for purposes of records management closed and restricted records may be disposed of in accordance with the provisions of §§ 30–1–10 to 30–1–140 for the disposal of public records.

"Agency" means any State department, agency or institution.

"Subdivision" means any political subdivision of the State.

"Archives" means the South Carolina Department of Archives and History.

"Director" means the Director of the Department of Archives and History.

HISTORY: 1962 Code § 1-581; 1973 (58) 350.

§ 30–1–140. Penalties for refusal or neglect to perform duty respecting records.

Any public official or custodian of public records who refuses or neglects to perform any duty required of him by §§ 30–1–10 to 30–1–140 shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars for each month of such refusal or neglect.

HISTORY: 1962 Code § 1-594; 1973 (58) 350.

§ 30-1-60. Inspection and examination of records.

Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person unless such records by law must be withheld, or the public interest is best served by not disclosing them, and he shall furnish, upon reasonable request and at a reasonable fee, certified copies of public records not restricted by law or withheld from use in the public interest.

§ 30-3-10. Short title.

This chapter shall be known and cited as the "Freedom of Information Act."

HISTORY: 1962 Code § 1-20; 1972 (57) 2585.

Research and Practice References—
The Freedom of Information Act. 25 SC L Rev 407.

§ 30-3-20. Definitions.

"Public agency" means any department of the State, any State board, commission, agency and authority, any public or governmental bodies or political subdivisions of the State, including counties, municipalities, townships, school districts and special purpose districts, or any organization, corporation or agency supported in whole or in part by public funds, or expending public funds; and includes any quasi-governmental body of the State and its political subdivisions including, without limitation, such bodies as the South Carolina Public Service Authority and the South Carolina State Ports Authority.

"Public meetings" means the meetings of the governing body of any public agency.

"Public records" means the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used or retained by any public agency, regardless of physical form or characteristics. Records such as income tax returns, medical records, scholastic records, adoption records and other records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter, nor shall the definition of public records include those records concerning which it is shown that the public interest is best served by not disclosing them to the public. *Provided, however,* nothing herein shall authorize the disclosure of records of the Board of Bank Control pertaining to applications and surveys for charters and branches of banks and savings and loan associations; or surveys and examinations of such institutions required to be made by law.

HISTORY: 1962 Code § 1-20.1; 1972 (57) 2585.

§ 30–3–30. Access to public records for inspection and copying.

Except as otherwise specifically provided by laws now in effect, or laws hereafter enacted to provide otherwise, all public records, as defined in § 30–3–20, shall be open to inspection and copying during the regular business hours of the custodian of the records.

Reasonable access to these records and reasonable access to available facilities for the full exercise of the right to inspect and copy such records shall not be denied. A reasonable charge may be made for copies furnished by the public agency.

If the record is in active use or in storage and, therefore, not available at the time a request to examine it is made, the custodian shall state this fact in writing to the applicant and set a date and hour within a reasonable time at which the record will be available for the exercise of the rights given by this chapter.

HISTORY: 1962 Code § 1-20.2; 1972 (57) 2585.

§ 30–3–40. Meetings of public agencies shall be open to public; exceptions.

(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of each public agency of the State shall be open to the public.

(b) Executive sessions shall be permitted only for the purpose of discussing or considering: (1) employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, administrative briefings and committee reports; (2) negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations; (3) private matters presented by individuals or groups of citizens. Executive sessions shall not be called for the purpose of defeating the reason or the spirit of this chapter. Prior to going into executive session the public agency shall vote in public on the question and when such vote is favorable the presiding officer shall announce the purpose of the executive session. Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this subsection "formal action" means a recorded vote committing the body concerned to a specific course of action.

(c) Nothing in this chapter shall be construed: (1) To prevent public agencies which administer the licensing of persons engaging in businesses, occupations or professions from holding executive sessions to prepare, approve, grade or administer examinations. All official actions resulting from such examinations shall be a matter of public record.

(2) To prohibit a public agency or the South Carolina Probation, Parole and Pardon Board or the State Election Commission from holding an executive session to deliberate on a decision to be reached based upon evidence introduced in a public proceeding before it. At the conclusion of such deliberation, further proceedings shall be public.

(3) To require the disclosure in meetings of matters otherwise prohibited by law from being disclosed.

(4) To prevent any executive agency from holding an executive session to consider matters affecting the security of the State or Nation.

(5) To prevent any executive session to consider the conferring of honorary degrees or the acceptance of gifts, donations and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(d) Committees and subcommittees of the General Assembly or any public agency, board or commission may, upon majority vote of its membership, conduct executive sessions.

(e) Sessions of the General Assembly may enter into executive sessions authorized by the Constitution of this State and rules adopted pursuant thereto.

§ 30–3–50. Injunctive relief; penalties.

Any citizen of the State may apply to the circuit court to enforce the provisions of this chapter in appropriate cases, provided such application is made no later than sixty days following the date which the alleged violation occurs or sixty days after ratification of such act in public session, whichever comes later. The court may order equitable relief as it deems appropriate.

In addition to the relief provided in this section, any person or group of persons who willfully violate the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days.

73–1. Definitions.

A. SLED. The term "SLED" shall mean the South Carolina Law Enforcement Division.

B. Chemical Analysis. The term "chemical analysis" shall mean a chemical analysis of a person's breath to determine blood alcohol level.

C. Blood Alcohol Level. The term "blood alcohol level" shall mean percent by weight of alcohol in a person's blood. At the 0.10 percent level, the percentage shall be based upon one hundred milligrams of alcohol per one hundred cubic centimeters of blood.

D. Breath-Testing Device. The term "breath-testing device" shall mean an instrument for making a chemical analysis and giving the resultant blood alcohol level on the basis of an alveolar air/blood ratio of 2,100:1.

E. Permittee. The term "permittee" shall mean an individual currently holding a valid permit from SLED to perform chemical analyses, of the type set forth within the permit, under the provisions of § 23–3–130, Code of Laws of South Carolina, 1976, as amended.

COMPUTERIZED CRIMINAL HISTORY

73-20. [Criminal History to Include Disposition.]

All criminal history information collected, stored, or disseminated through the South Carolina Law Enforcement's computer, SLED/CJICS system, shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein.

73-21. [Information in Criminal History File.]

South Carolina Law Enforcement Division, the central state repository, has the shared management responsibility with FBI/NCIC in monitoring intrastate use of the Computerized Criminal History file including Security and Privacy. Entries of Criminal History data into the NCIC computer and updating of the computerized record will be accepted only from the central state repository, SLED. Terminal devices in other criminal justice agencies will be limited to inquiries and responses thereto. Data stored in the SLED/CJICS Computerized Criminal History data base will include personal identification data, as well as public record data concerning each of the individual major steps through the criminal justice process. A record will be initiated upon the first arrest of an individual, providing the fingerprint card is received by the SLED Records Section. Each arrest will initiate a cycle in the record, each cycle will be complete upon the offender's discharge from the criminal justice process in disposition of that arrest. Each cycle in an individual's record will be based upon fingerprint identification. The criminal fingerprint card documenting this identification will be stored at SLED. The data with respect to current arrests entered in the SLED Records files will include all offenses committed in South Carolina with the exception of those committed by juveniles which are processed through family court. Excluded from the national data base will be juvenile offenders from family court, charges of drunkeness and/or vagrancy; certain public order offenses, i.e., disturbing the peace, curfew violations, loitering, false fire alarms; traffic violations (except data will be stored on arrests for manslaughter, driving under the influence of drugs or liquor, and "hit and run"); and nonspecific charges of suspicion or investigation. Data included in the system must be limited to that with the characteristics of public record, i.e.:

(1) Recorded by officers of public agencies or divisions thereof directly and principally concerned with crime prevention, apprehension, adjudication, or rehabilitation of offenders.

(2) Recording must have been made in satisfaction of public duty.

(3) The public duty must have been directly relevant to criminal justice responsibilities of the agency.

Social history data will not be contained in the SLED criminal history system, e.g. narcotic civil commitment or mental hygiene commitment, unless such commitments are part of the criminal justice process. SLED will be the only agency which can purge/expunge criminal history data. Expungements will be made upon receipt of court order or death notice to the SLED Records Section.

73-22. [Quality Control of Records in File.]

Completeness and accuracy of the records entered, modified, expunged or deleted will be checked as a quality control function. Where errors or points of incompleteness are detected, the SLED control terminal shall take immediate action to correct or complete the record in the SLED data base as well as the NCIC record. The SLED dissemination log will be checked immediately upon awareness of error, incompleteness, expungement or death notice and the criminal history records unit will provide agencies who have received criminal history information an updated full criminal history rap sheet. All criminal history records are updated daily.

73-23. [Agencies Having Access to File.]

Direct access to the SLED or NCIC data base by means of terminal device, will be permitted only for criminal justice agencies in the discharge of their official, mandated responsibilities. Agencies that will be permitted direct access to criminal history data include:

1. Law enforcement at all governmental levels that are responsible for enforcement of all criminal laws.
2. Prosecutive agencies and departments at all governmental levels.
3. Courts at all governmental levels with a criminal or equivalent jurisdiction.
4. Correction departments at all governmental levels, including corrective institutions and probation departments.
5. Parole commissions and agencies at all governmental levels.
6. Agencies at all governmental levels which have as a principal function the collection and provision of fingerprint identification information.
7. State control terminal agency, SLED, which has as a sole

function the development and operation of a criminal justice information system.

8. Regional or local governmental organizations established pursuant to statute which have as their sole function the collection and processing of criminal justice information and whose policy and governing boards have as a minimum a majority composition of members representing criminal justice agencies.

All agencies having terminals on the system are required to physically place these terminals in secure locations within the authorized agency. The agencies having terminals with access to criminal history must have terminal operators screened and restrict access to the terminal to a minimum number of authorized employees. Copies of criminal history data obtained from terminal devices must be afforded security to prevent any unauthorized access to or use of that data. All remote terminals will maintain a hard copy of computerized criminal history inquiries with notation of individual making request for record for a period of 90 days.

73-24. [Individual Access to File.]

SLED will allow any individual, upon satisfactory verification of his identity through fingerprints, to review, without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction.

SUBARTICLE II

UNIFORM CRIME REPORTING

73-30. Uniform Crime Reporting.

1. Every law enforcement agency shall send to SLED a copy of each report made by any officer during the performance of his duties in responding to reported criminal violations within the jurisdiction of that agency. Reports will be sent to SLED regardless of the degree of seriousness of the reported criminal activity.

2. The reports shall be recorded on standard forms approved by SLED, commonly referred to as incident reports.

3. Reports shall include, to the maximum extent possible, details of all offenses investigated by officers, whether actual or unfounded, to include follow-up investigations, reports of property

recovered, changes in the status of any case, etc. Sworn statements of witnesses need not be sent to SLED; however, information gathered from such statements should be transmitted to SLED if it changes or clarifies the status or classification of a prior report.

4. Every law enforcement agency shall send to SLED a copy of each arrest document made by any officer, jailor, etc. Departments will record the personal descriptive data and criminal charges of each person who is placed under lawful arrest, regardless of whether that person is incarcerated, released on bail or otherwise disposed of. Arrest documents will be completed on all persons placed under lawful arrest regardless of whether the case is ultimately prosecuted. Arrest documents will be completed on each person placed under lawful arrest regardless of the degree of seriousness of the offense committed.

5. Arrest documents shall be of a standard type approved by SLED, commonly referred to as booking reports.

6. All copies of incident reports and booking reports shall be forwarded to SLED on a regular and timely basis, but not less often than once weekly. Incident and booking reports made by any agency during any month shall arrive at SLED no later than the fifth day of the following month.

7. SLED shall be responsible for processing, analyzing, coding, compiling, etc. all incident and booking reports received and shall make available to law enforcement and other governmental agencies whatever information is gathered from the reports within the limits of the reporting program.

8. SLED shall be responsible for the proper classification and counting of all incident and booking reports. Classification and counting procedures will correspond insofar as is feasible to those generally accepted nationwide in all uniform crime reporting programs. These procedures are defined by the International Association of Chiefs of Police Committee on Uniform Crime Reports, the Uniform Crime Reports Division of the Federal Bureau of Investigation and the Uniform Crime Reports Section of SLED.

1-27-1. Records open to inspection.—In every case where the keeping of a record, or the preservation of a document or other instrument is required of an officer or public servant under any statute of this state, such record, document, or other instrument shall be kept available and open to inspection by any person during the business hours of the office or place where the same is kept.

Source: SL 1935, ch 177, § 1; SDC 1939, § 48.0701; SL 1977, ch 16, § 2.

Amendments.

The 1977 amendment substituted "any statute of this state" for "the laws of this state."

1-27-2. Criminal records not open to inspection.—

1-27-2. Repealed by SL 1977, ch 16, § 3.

1-27-3. Records declared confidential or secret.—Section 1-27-1 shall not apply to such records as are specifically enjoined to be held confidential or secret by the laws requiring them to be so kept.

Source: SL 1935, ch 177, § 2; SDC 1939, § 48.0701; SL 1977, ch 16, § 1.

Amendments.

The 1977 amendment inserted "confidential or."

CHAPTER 23-5

CRIMINAL IDENTIFICATION

Section

23-5-1. Criminal identifying information—Procurement and filing by attorney general.—The attorney general shall procure and file for record, photographs, pictures, descriptions, fingerprints, measurements, and such other information as may be pertinent of all persons who may hereafter be taken into custody for offenses other than those arising solely out of the violation of the fish, game, conservation, or traffic laws of this state with the exception of those persons charged with driving a motor vehicle while under the influence of alcoholic beverages, and also of all criminals wheresoever the same may be procured. It shall be the duty of the person in charge of any state institution to furnish any such information to the attorney general upon his request.

Source: SL 1935, ch 97, § 6 (3); 1937, ch 104, § 3; SDC 1939, § 55.1606; SL 1966, ch 161, § 5.

Cross-Reference.

Maintenance of system of criminal identification by division of criminal investigation, § 23-3-16.

23-5-2. Co-operation of attorney general with law enforcement officers to establish complete state system.—The attorney general shall also co-operate with, and assist sheriffs, chiefs of police, and other law enforcement officers to the end that a complete state system of criminal identification, investigation, and statistical information may be established.

Source: SL 1935, ch 97, § 6 (3); 1937, ch 104, § 3; SDC 1939, § 55.1606; SL 1966, ch 161, § 5.

Cross-References.

Access of bureau of criminal statistics to public records, § 23-6-11.

Co-operation by division of criminal investigation with other peace officers, §§ 23-3-14, 23-3-15.

23-5-3. Criminal records of inmates of penal institutions—Procuring and filing.—The attorney general shall procure and file for record the fingerprint impressions and other means of identification and statistical information of all persons contained in any workhouse, jail, reformatory, penitentiary, or other penal institutions, together with such other information as he may require from the law enforcement officers of the state and its subdivisions.

Source: SL 1935, ch 97, § 6 (3); 1937, ch 104, § 3; SDC 1939, § 55.1606; SL 1966, ch 161, § 5.

Cross-References.

Compilation of statistical information by director of criminal statistics, § 23-6-4.

Warden's register of convicts received, § 24-2-3.

Warden's register respecting conduct and personal history of prisoner, § 24-2-19.

23-5-4. Fingerprints to be taken and forwarded on arrests—Failure of officer to take and report, misdemeanor, penalty.—It is made the duty of the sheriffs of the several counties of the state, the chiefs of police, marshals of the cities and towns, or any other law enforcement officers and peace officers of the state, immediately upon the arrest of any person for a felony or misdemeanor, exclusive of those exceptions set forth in § 23-5-1, to take his fingerprints according to the fingerprint system of identification established by the division of criminal investigation, on forms to be furnished such sheriffs, chiefs of police, marshals or other law enforcement or peace officers and to forward the same together with other descriptions as may be required with a history of the offense alleged to have been committed, to this division for classification and filing. A copy of the fingerprints of the person so arrested, shall be transmitted forthwith by the arresting officer to the federal bureau of investigation in Washington, D. C.

Any officer required under the provisions of this section to take and report fingerprint records, who shall fail to take and report such records as is required by this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars or imprisonment not exceeding thirty days, or by both.

Source: SL 1935, ch 97, § 6; 1937, ch 104, § 3; SDC 1939, §§ 55.1607, 55.9906; SL 1966, ch 161, § 6.

23-5-5. Fingerprints taken on arrest—Comparison with files—Information on previous criminal record.—The attorney general shall compare the description received pursuant to § 23-5-4 with those already on file in the division of criminal investigation and if he finds the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the arresting officer of such fact.

Source: SL 1935, ch 97, § 6 (4); 1937, ch 104, § 3; SDC 1939, § 55.1607; SL 1966, ch 161, § 6.

23-5-6. Identification records made by wardens and superintendents of penal institutions.—The warden or superintendent of any penal or reformatory institution in this state, the attorney general or his authorized assistants or agents, the sheriff of any county in this state, or the chief of police of any municipality in the state is hereby authorized and empowered, when in his judgment such proceeding shall be necessary for the purpose of identifying any person accused or convicted of crime, or for the purpose of preventing the escape or of facilitating the recapture of any such person, to cause to be taken or made and preserved such photographs, impressions, measurements, descriptions, and records as may in the judgment of any of said officials be deemed necessary.

Source: SL 1921, ch 186, § 1; SDC 1939 & Supp 1960, § 34.1614.

23-5-7. Records for identification of prisoners—Filing and preserving in department or institution—Restrictions as to use.—All photographs, impressions, measurements, descriptions, or records taken or made as provided for in § 23-5-6 shall be filed and preserved in the department or institution where made or taken and shall not be published, transferred, or circulated outside such department or institutions, nor exhibited to the public or any person or persons except duly authorized peace officers unless the subject of such photograph, measurement, description, or other record shall have become a fugitive from justice, or shall have escaped from a penal or reformatory institution.

Source: SL 1921, ch 186, § 2; SDC 1939 & Supp 1960, § 34.1614.

23-5-8. Warden of penitentiary—Furnishing of identification of inmates, transmission to division of criminal investigation.—The warden of the penitentiary shall furnish photographs, fingerprints, and other identifying information of all inmates received at such institution and shall transmit the same to the division of criminal investigation.

Source: SL 1935, ch 97, § 6 (2); 1937, ch 104, § 3; SDC 1939, § 55.1605; SL 1966, ch 161, § 4.

Cross-Reference.

Warden's register of convicts received, § 24-2-3.

CHAPTER 23-6

CRIMINAL STATISTICS

Section

23-6-1. Bureau of criminal statistics—Establishment in office of attorney general.—There is hereby established, in the office of the attorney general a bureau of criminal statistics, hereinafter called the bureau.

Source: SL 1939, ch 138, § 1; SDC Supp 1960, § 55.15A01.

Cross-Reference.

Division of criminal investigation in attorney general's office, § 23-3-6.

23-6-2. Attorney general as director of bureau—Seal—No salary.—The bureau shall function through a director. The attorney general shall, by virtue of his office, be the director. The director shall have a seal of office in such form as he shall prescribe. The attorney general shall not receive a salary as such director.

Source: SL 1939, ch 138, § 2; SDC Supp 1960, § 55.15A02.

23-6-3. Work of bureau—Assignment of deputies and clerks—Expenses paid from department appropriation.—The attorney general shall assign for the work of the bureau such deputies and clerical assistants in his department as he may from time to time find necessary. The compensation of the clerical assistants assigned to the bureau and all other expenses of the bureau shall be paid out of the appropriation for the department of the attorney general when approved by him.

Source: SL 1939, ch 138, § 2; SDC Supp 1960, § 55.15A02.

23-6-4. Statistical information—Compilation by director.—The director shall collect and compile information, statistical and otherwise, which will, as far as practicable, present an accurate survey of the number and character of crimes committed in the state, the extent and character of delinquency, the operations of the police, prosecuting attorneys, courts and other public agencies of criminal justice, and the operations of penal and reformatory institutions, probation, parole, and other public agencies concerned with the punishment or treatment of criminal offenders. He shall include such information as may be useful in the study of crime and delinquency and the causes thereof, for the administration of criminal justice, and for the apprehension, punishment and treatment of criminal offenders.

Source: SL 1939, ch 138, § 3; SDC Supp 1960, § 55.15A03.

Cross-Reference.

Procuring and filing criminal records of inmates of penal institutions, § 23-5-3.

23-6-5. Information as to particular offenders—Gathering by director.—The director shall also gather such information concerning particular criminal offenders as in his judgment may be helpful to other public officials or agencies dealing with them.

Source: SL 1939, ch 138, § 3; SDC Supp 1960, § 55.15A03.

23-6-6. Classification of crimes and offenders—Promulgation by director.—The director shall promulgate classifications and shall prepare forms for the statistical classification of crimes, of offenders, of their punishment and treatment and of all other pertinent information, to conform, as far as practicable, with those promulgated by the appropriate agency in the United States department of justice, and by the federal bureau of the census.

Source: SL 1939, ch 138, § 4; SDC Supp 1960, § 55.15A04.

23-6-7. Authority of director to enter prisons and penal institutions.—The director, or any person deputized by the director, upon exhibiting specific written authorization by the director, is empowered to enter any prison, jail, penal or reformatory institution in this state, and to take or cause to be taken fingerprints or photographs, or both, and to make investigation relative to any person, confined therein, who has been accused or convicted of a crime, for the purpose of obtaining information which may lead to the identification of criminals. The officials in charge of all such institutions are hereby required to render the director, and all persons so deputized by him, the needed assistance to that end.

Source: SL 1939, ch 138, § 8; SDC Supp 1960, § 55.15A08.

Cross-Reference.

Government of penitentiary by board of charities and corrections, § 24-1-4.

23-6-8. Information received by bureau—Filing by director—Form and classification of records, preservation.—The director shall file, or cause to be filed, all information received by the bureau and shall make, or cause to be made, a complete and systematic record and index thereof, to provide a convenient method of reference and consultation. As far as practicable all such records shall coincide in form and classification with those of the appropriate agency in the United States department of justice, and with those of similar bureaus in other states, in order to permit easy interchange of information and records. Information and records received by the bureau may not be destroyed.

Source: SL 1939, ch 138, § 9; SDC Supp 1960, § 55.15A09.

23-6-9. Copy of available information—Furnishing to law enforcement agencies.—Upon request therefor and payment of the reasonable cost, the director shall furnish a copy of all available information and of records pertaining to the identification and history of any person or persons of whom the bureau has a record, to any similar governmental bureau, sheriff, chief of police, prosecuting attorney, attorney general, or any officer of similar rank and description of the federal government, or of any state or territory of the United States or of any insular possession thereof, or of the District of Columbia, or of any foreign country, or to the judge of any court, before whom such person is being prosecuted, or has been tried and convicted, or by whom such person may have been paroled.

Source: SL 1939, ch 138, § 10; SDC Supp 1960, § 55.15A10.

23-6-10. Reports by director—Contents—Distribution.—Annually, and at such other times as he may determine, the director shall prepare and publish reports reflecting the crime situation in this state, the operation of public agencies engaged in the administration of criminal justice and in the conduct of the punishment or treatment of criminals. The director shall point out what he considers to be significant features regarding crime, the administration of criminal justice and the punishment or treatment of criminals, and may recommend such measures as he may consider desirable or constructive with reference thereto. Upon request therefor and payment of the reasonable cost, the director shall furnish copies of such reports to officers of the United States, and to any public police, prosecution, judicial, punishment, or treatment official or agency of this or any other state, or territory, or country.

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23-6-11. Access of director to public records.—Every person having custody or charge of public or official records or documents, from which information is sought for the purposes of this chapter, shall grant to the director, or to any person deputized by him, access thereto, for the purpose of obtaining such information.

Source: SL 1939, ch 138, § 7; SDC Supp 1960, § 55.15A07.

Cross-Reference.

Establishment by attorney general of system of criminal identification and statistical information, § 23-5-2.

23-6-12. Co-operation of bureau with federal government and other states—Development of international system of criminal identification.—The bureau shall co-operate with the appropriate agency of the federal government and with similar agencies in other states, territories and countries, toward the end of developing and carrying on a complete and uniform interstate, national and international system of criminal identification.

Source: SL 1939, ch 138, § 11; SDC Supp 1960, § 55.15A11.

23-6-13. Certified copies of documents—Admission as evidence.—Whenever any record, photograph, picture, fingerprint, or other document or paper, in the files of the bureau of this state, or in the files of a similar agency in any other state, territory or country, or of the United States, may be admissible in evidence, a copy thereof, duly certified by the director of any such bureau, under seal of his office, or with the appropriate seal of state, shall be admissible in evidence with the same effect as the original.

Source: SL 1939, ch 138, § 13; SDC Supp 1960, § 55.15A13.

23-6-14. Access to files and records of bureau.—The Governor, and persons specifically authorized by the director, shall have access to the files and records of the bureau. No such file or record of information shall be given out or made public except as provided in this chapter, or except by order of court, or except as may be necessary in connection with any criminal investigation in the judgment of the Governor or director, for the apprehension, identification or trial of a person, or persons, accused of crime, or for the identification of deceased persons, or for the identification of property.

Source: SL 1939, ch 138, § 14; SDC Supp 1960, § 55.15A14.

23-6-15. Acceptance of rewards by director or employees prohibited.—No rewards for the apprehension or conviction of any person or for the recovery of any property may be accepted by the director, or by any employee of the bureau, but any such reward, if paid to the director or an employee of the bureau shall be paid into the state treasury and credited to the general fund of the state.

Source: SL 1939, ch 138, § 16; SDC Supp 1960, § 55.15A15.

23-6-16. Officials dealing with persons charged with crime—Reports required by director.—It shall be the duty of the clerk of every court, of the chief or head of every police department, or other police agency, of every sheriff and constable, of every prosecuting attorney, of every probation or parole officer, and of the head of every department or institution, state, county or local, which deals with criminals, or persons charged with crime, and it shall be the duty of every other official who, by reason of his office, is qualified to furnish information and reports, to prepare and send in writing to the director quarterly, semiannually, or annually, as the director may designate all reports and information requested by the director, to enable him to perform the duties provided in this chapter; but nothing herein shall preclude the gathering, by any public official, of information in addition to that required by the director.

Source: SL 1939, ch 138, § 5; SDC Supp 1960, § 55.15A05.

23-6-17. Coroners—Transmission of information required by director.—It shall be the duty of all coroners to transmit promptly to the director reports and information, as required by the director, regarding autopsies performed and inquests conducted, together with the verdict of the coroner's jury.

Source: SL 1939, ch 138, § 6; SDC Supp 1960, § 55.15A06.

Cross-Reference.
Coroner's inquests, Chapter 23-14.

23-6-18. Violations of chapter—Misdemeanor—Penalty.—Any official or employee of this state, or of any political subdivision thereof, who willfully refuses or neglects to comply with, or willfully violates any of the provisions of this chapter, or who intentionally makes a false statement in any report required under this chapter, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense and shall be subject to removal from office.

Source: SL 1939, ch 138, § 15; SDC Supp 1960, § 55.9933.

23-6-19. Uniformity of interpretation of chapter.—This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Source: SL 1939, ch 138, § 17; SDC Supp 1960, § 55.15A16.

23-6-20. Citation of chapter.—This chapter may be cited as the Uniform Criminal Statistics Act.

Source: SL 1939, ch 138, § 19; SDC Supp 1960, § 55.15A17.

23-48-37. Conviction of felony—Statements of facts furnished warden of penitentiary.—Whenever any person shall be convicted of a felony, it shall be the duty of the judge before whom such person is convicted and also of the state's attorney of the county in which he or she is convicted to furnish the warden of the penitentiary with an official statement of the facts and circumstances constituting the crime whereof the convict has been convicted, with all the information accessible to them in regard to the career of the convict prior to the commission of the crime of which he or she is convicted, relating to the habits, associates, disposition, and reputation of such convict and any other facts or circumstances which may tend to throw any light upon the question as to whether he or she is capable of again becoming a law-abiding citizen.

Source: SL 1905, ch 144, § 1; 1907, ch 198, § 1; RC 1919, § 5395; SDC 1939 & Supp 1960, § 34.3711.

23-48-38. Conviction of felony—Transcription of official statements, attachment to judgment.—It shall be the duty of the shorthand reporter, when directed by the judge, to write the official statements of the judge and state's attorney referred to in § 23-48-37.

It shall be the duty of the clerk of the court to cause such official statements to be attached to the certified copy of the judgment of conviction to be delivered by the sheriff to the warden of the penitentiary at the time of the delivery of the convict.

Source: SL 1905, ch 144, § 1; 1907, ch 198, § 1; RC 1919, § 5395; SDC 1939 & Supp 1960, § 34.3711.

23-48-39. Conviction of felony—Official statements—Record and preservation.—It shall be the duty of the warden upon receipt of such convict to safely keep and record the official statements referred to in § 23-48-37 and have the same at all times ready for the inspection of the board of charities and corrections and the Governor.

Source: SL 1905, ch 144, § 1; 1907, ch 198, § 1; RC 1919, § 5395; SDC 1939 & Supp 1960, § 34.3711.

39-17-113. Probation permitted on first offense—Conviction on violation of terms.—Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to, or is found guilty under § 39-17-90, § 39-17-91, § 39-17-92, § 39-17-93, § 39-17-94, § 39-17-95 or § 39-17-96 the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

Source: SL 1970, ch 229, § 10 (i); 1971, ch 225, § 4.

Amendments.

The 1971 amendment inserted references to §§ 39-17-90, 39-17-91, 39-17-92, 39-17-93 and 39-17-94 in the first sentence.

Repeal.

Section 42-23, ch 158, SL 1976, repeals this section effective April 1, 1977.

39-17-114. Discharge from probation—Dismissal of proceedings —No adjudication of guilt—Record—Effect of discharge and dismissal.—If during the period of his probation under § 39-17-113, such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt. The court shall cause to be fowarded a nonpublic record of disposition to be retained by the division of criminal investigation solely for use by law enforcement agencies, prosecutors, and courts in determining whether or not, in subsequent proceedings, such person qualifies under this section. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. A deferred imposition of sentence when applying penalties for second or subsequent offenses under this chapter shall not be regarded as a first time conviction. Discharge and dismissal under this section may occur only once with respect to any person.

Source: SL 1970, ch 229, § 10 (i); 1975, ch 257, § 1.

39-17-116. Centralized statistical unit—Records of addicts and offenders maintained—Availability of information.—The department of health shall, in addition to other powers and duties vested in it by this chapter or any other act, co-operate with the federal bureau of narcotics and dangerous drugs by establishing a centralized unit which will accept, catalogue, file, and collect statistics, including records of drug and substance addicts and other drug and substance law offenders within the state, and make such information available for federal, state, and local law enforcement purposes.

Source: SL 1970, ch 229, § 5 (d).

39-17-118. Exchange of information between governmental officials.—The department of health shall, in addition to other powers and duties vested in it by this chapter or any other act, arrange for the exchange of information between governmental officials concerning the use and abuse of drugs and substances.

Source: SL 1970, ch 229, § 5 (b).

CHAPTER 5—ADMINISTRATIVE RULES AND PROCEDURE

15-303. Photographic copy deemed original record. — Such photographs, microphotographs or photographic film shall be deemed to be original records for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification, or certified copy thereof shall, for all purposes recited therein, be deemed to be a transcript, exemplification or certified copy of the original. [Acts 1947, ch. 26, § 3; C. Supp. 1950, § 255.93 (Williams, § 1034.82).]

Collateral References. 76 C. J. S., Records, § 33.

15-304. Records open to public inspection.—All state, county and municipal records shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any such citizen, unless otherwise provided by law or regulations made pursuant thereto. [Acts 1957, ch. 285, § 1.]

15-305. Confidential records.—(1) The medical records of patients in state hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, shall be treated as confidential and shall not be open for inspection by members of the public. Additionally, all investigative records of the Tennessee bureau of criminal identification shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record, however, such investigative records of the Tennessee bureau of criminal identification shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except those directly involved in the investigation in the Tennessee bureau of investigation itself and the governor himself. The records, documents and papers in the possession of the military department which involve the security of the United States and/or the state of Tennessee, including but not restricted to national guard personnel records, staff studies and investigations, shall be treated as confidential and shall not be open for inspection by members of the public.

(2) The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or his parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian of a minor student attending any institution of elementary or secondary education, except as otherwise provided by law or regulation pursuant thereto and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the state department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

(3) The records of taxpayers in the department of revenue shall be treated as confidential and shall not be opened for inspection by members of the public. Statistical information based upon such records which is not identified or identifiable with a particular taxpayer may be released to any person, agency or the public. Specific information relating to a particular taxpayer may be divulged only to:

a) The taxpayer, or

b) An attorney or other agent duly authorized by the taxpayer in such a manner as the commissioner may require, or

c) Employees of the department for the purpose of checking, comparing, and correcting returns, or

15-305. Confidential records.—

d) Any collection, regulatory, or inspection agency of this state, the United States, or another state; provided, that before such information may be divulged to the United States or another state, such governmental unit shall agree to furnish this state with such information as it may deem necessary to enforce the Tennessee tax laws, provided further that such information must be relevant to the functions and duties of the requesting agency or governmental unit, or

e) Duly authorized officials of a political subdivision of this state imposing a tax of a like nature for the purpose of ascertaining whether proper local taxes are being paid or where their interests are involved, or

f) Any source authorized to receive it pursuant to a proper judicial order or the provisions of a specific statute other than this chapter. [Acts 1957, ch. 285, § 2; 1970 (Adj. S.), ch. 531, §§ 1, 2; 1973, ch. 99, § 1; 1975, ch. 127, § 1; 1976 (Adj. S.), ch. 552, § 1; 1976 (Adj. S.), ch. 777, § 1.]

15-307. Right to make copies of public records.—In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof, or his authorized deputy; provided, however, the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats. [Acts 1957, ch. 285, § 4.]

15-306. Violations.—(1) Any official who shall violate the provisions of §§ 15-304—15-307 shall be deemed guilty of a misdemeanor.

(2) Any officer, employee, or agent of the state or political subdivision, who divulges (except as authorized hereinabove or when called upon to testify in any judicial or administrative proceeding to which the state or political subdivision, or such state or local official, body, or commission, as such, is a party), or who makes known to any person in any manner whatever not provided by law, any information acquired by him through an inspection permitted him or another under any provisions of the U.S. Internal Revenue Code, or who permits any income return or copy thereof or any book containing any abstract or particulars thereof, or any other information, acquired by him through an inspection permitted him or another under any provisions of such law, to be seen or examined by any person except as provided by law, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000), or imprisoned not more than one year, or both, together with the costs of prosecution. [Acts 1957, ch. 285, § 3; 1975, ch. 127, § 2.]

15-308. Records of convictions of traffic and other violations—Availability.—Any public official having charge or custody of or control over any public records of convictions of traffic violations or any other state, ounty or municipal public offenses shall made available to any citizen, ipon request, during regular office hours, a copy or copies of any such record requested by such citizen, upon the payment of a reasonable charge or fee therefor. Such official is authorized to fix a charge or fee per copy that would reasonably defray the cost of producing and delivering such copy or copies. [Acts 1974 (Adj. S.), ch. 581, § 1.]

CHAPTER 4—PUBLIC RECORDS COMMISSION

15-401. Definitions.—1. "Section" shall mean the records management section of the department of finance and administration.

2. "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, microforms, electronic data processing output, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

3. "Permanent records" shall mean those records which have permanent administrative, fiscal, historical or legal value.

4. "Temporary records" shall mean those records which cease to have value immediately after departmental use and need not be retained for any purpose.

5. "Working papers" shall mean those records created to serve as input for final reporting documents, including electronic data processed records, and/or computer output microfilm, and those records which become obsolete immediately after agency use or publication.

6. "Agency" shall mean any department, division, board, bureau, commission, or other separate unit of government created or established by the constitution, by law or pursuant to law.

7. "Disposition" shall mean preservation of the original records in whole or in part, preservation by photographic or other reproduction processes, or outright destruction of the records. [Acts 1974 (Adj. S.), ch. 739, § 1; 1975, ch. 286, § 2.]

15-402. Public records commission created—Duties.—A public records commission is hereby created to consist of the attorney general, the comptroller of the treasury, the state librarian and archivist, the executive director of the legislative council, and the commissioner of finance and administration as permanent members, any of whom may designate a deputy with a vote as his agent to represent him, the president of the Tennessee historical society as a nonvoting member, and, when required, one (1) temporary and nonvoting member as provided in § 15-403. It shall be the duty of the commission to determine and order proper disposition of state records. The commission shall direct the department of finance and administration to initiate, through the records management section, by regulation or otherwise, any action it may consider necessary to accomplish more efficient control and regulation of records holdings and management in any agency. Such rules and regulations may authorize centralized microfilming for all departments, etc., or provide for other methods of reproduction for the more efficient disposition of state records. The commission shall elect its chairman and shall meet not less often than twice annually. Members shall be reimbursed for actual and necessary expenses when attending meetings, and those members who do not receive a fixed salary from the state also shall be paid a per diem of ten dollars ($10.00) for each day of actual meeting. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general. [Acts 1974 (Adj. S.), ch. 739, § 2; 1975, ch. 286, § 2; 1976 (Adj. S.), ch. 806, § 1(58).]

15-403. Records management section—Creation and disposition of records.—The records management section of the department of finance and administration shall be the primary records management agency for state government, and as such shall direct the disposition of electronic processed records and/or computer output microfilm records. The section shall cooperate with other agencies in the creation of records, forms, etc., which will eventually be subject to retention and/or disposition scheduling. Whenever the head of any state department, commission, board or other agency shall have certified that records created by his department, either permanent, temporary or working papers, as defined in § 15-401, have reached the end of the retention period established prior to the generation of such records, the public records commission shall then approve or disapprove by a majority vote, the disposition of such records in a manner specified in the rules and regulations of the commission and any disposition schedule already in effect may be voided or amended by a majority vote at any time by the commission, upon recommendation of a member of the commission or the head of the appropriate department, commission, board or other agency, in consultation with the staff of the records management section.

No record or records shall be scheduled for destruction without the unanimous approval of the voting members of the public records commission.

All records concerning private or public lands shall be forever preserved. This chapter shall not apply to legislative or judicial records except that upon the written request of the speaker of the senate, the speaker of the house of representatives, and the secretary of state as to legislative records and the attorney general as to judicial records, the commission may initiate and conduct a records disposition program limited to such records as may be designated in the said written request. For this purpose, a representative of the speaker of the senate, a representative of the speaker of the house of representatives, and a representative of the secretary of state or a representative of the attorney general shall serve as a nonvoting temporary member of the commission as may be appropriate when the disposition of legislative or judicial records is under consideration. [Acts 1974 (Adj. S.), ch. 739, § 3; 1975, ch. 286, § 2.]

BUREAU OF CRIMINAL IDENTIFICATION

38-501. Bureau created — Director — Divisions of bureau. — There is created in the department of safety a bureau of criminal identification, which shall be in charge of a director thereof. Such director shall be appointed by the commissioner of safety with the approval of the governor and shall be a person of experience and ability in the detection of crime. His duty shall be as directed by the commissioner in the investigation of crime in this state and it shall likewise be his duty to coordinate the two (2) divisions of the bureau. His compensation shall be fixed by the commissioner with the approval of the governor. The bureau of criminal identification shall be divided into two (2) divisions, to wit, the field division and the laboratory division, and the director, subject to the orders of the commissioner of safety, shall have full control over the activities of each division. [Acts 1951, ch. 173, § 1 (Williams, § 11465.10).]

38-503. Laboratory division — Employees — Duties — Fingerprints — Cooperation and assistance to other officers and agencies.—The laboratory division shall consist of experts in the scientific detection of crime. The commissioner and the director are hereby empowered to employ either upon a temporary or permanent basis, but are not limited to, ballistics expert, toxicologist, expert in the detection of human bloodstains and fingerprint experts and such other persons of expert knowledge in the detection of crime as may be found feasible. It shall be the duty of the laboratory division to keep a complete record of such fingerprints as may be obtained by them through exchange with the federal bureau of investigation, with similar bureaus in other states and from fingerprints obtained in this state. Each peace officer of this state, upon fingerprinting any person arrested, shall furnish a copy of such fingerprints to the laboratory division of the bureau. Likewise, such fingerprints as are now on file at the state penitentiary shall be transferred therefrom to the bureau and maintained by it. Each person hereafter received at the state penitentiary shall be fingerprinted and a copy thereof furnished to the bureau. The bureau is hereby authorized to exchange with the federal bureau of investigation any and all information obtained by it in the course of its work and to request of the federal bureau of investigation such information as it may desire.

The services of the laboratory division may be made available by the director thereof with the approval of the commissioner, to any district attorney general of this state or to any peace officer upon the approval of the district attorney general of the circuit in which such peace officer is located. The laboratory division likewise is authorized to avail itself of the services of any and all other departments of the state where the same may be of benefit to it, including but not limited to the state chemists and other expert personnel. [Acts 1951, ch. 173, § 3 (Williams, § 11465.12).]

LAW ENFORCEMENT PLANNING COMMISSION

38-1001. Establishment—Members—Number—Appointment.—There is hereby established the Tennessee law enforcement planning commission which shall consist of the governor, or in his absence his representative, the attorney general, the commissioner of public safety, the commissioner of correction, the director of the Tennessee law enforcement training academy, one (1) member of the senate, one (1) member of the house of representatives, and fifteen (15) other members, who shall be appointed by the governor and who shall serve at his pleasure. The appointed members all shall be residents of Tennessee and at least one (1) of them shall be the mayor of an incorporated municipality, at least one (1) shall be the county judge of a county presiding over the juvenile court, at least one (1) shall be the sheriff of a county, at least one (1) shall be a municipal police official; at least one (1) shall be a criminal court judge; at least one (1) shall be a general sessions court judge; at least one (1) shall be a juvenile court judge (other than a judge of a county court acting as a juvenile court judge); and at least three (3) shall be private citizens. Of the appointed members, at least one (1) shall be appointed from each of the state's congressional districts. [Acts 1969, ch. 254, § 1; 1971, ch. 385, §§ 1, 2; 1972 (Adj. S.), ch. 741, § 1; 1975, ch. 186, § 1.]

38-1003. Duties of commission.—The Tennessee law enforcement planning commission shall

(a) Assist the governor in developing, planning and carrying out a long-range, statewide crime and delinquency prevention program for this state.

(b) Assist the governor in coordinating the crime and delinquency prevention activities of all state departments and agencies.

(c) Advise and assist local communities and citizen groups in developing, planning, and carrying out citizen-action type, local crime and delinquency prevention councils and programs.

(d) Advise and assist the governor in establishing a clearing house for crime and delinquency prevention programs, methods, and techniques.

(e) Make an annual report to the legislature and the people of its activities and of experience gained both within and without this state in crime control coordination and crime prevention.

(f) Receive, administer, and expend federal and other assistance in the form of grants or otherwise, in order to further any of its purposes pursuant to this chapter. [Acts 1969, ch. 254, § 3.]

38-1005. Termination of commission.—The commission created by this chapter shall terminate and engage in no further operations at such time as federal grants or other forms of federal assistance shall no longer be available for the purposes of this chapter. [Acts 1969, ch. 254, § 5.]

EMPLOYMENT AND TRAINING OF POLICE OFFICERS

38-1101. Law enforcement planning commission — Expansion of duties. — The duties, authority and responsibilities of the Tennessee law enforcement planning commission shall be expanded to include the provisions of §§ 38-1102 — 38-1112. [Acts 1970 (Adj.S.), ch. 575, preliminary paragraph.]

38-1103. Special powers, police officer training. — The commission shall have the following special powers in connection with the employment and training of police officers:

(1) Establish uniform minimum standards for the employment and training of police officers including qualifications and requirements as may be established by the commission as contained in §§ 38-1104 and 38-1105.

(2) Establish standards and minimum curriculum requirements for courses of study offered by or for any municipality, the state of Tennessee or any political subdivision thereof, for the specific purpose of training police recruits or police officers.

(3) Consult and cooperate with municipalities, the state of Tennessee or any political subdivision thereof, for the specific purpose of training police recruits or police officers.

(4) Consult and cooperate with municipalities, the state of Tennessee or any political subdivision thereof and with universities, colleges, junior colleges and other educational institutions concerning the developing of police training schools and programs limited to education and training in the area of police science, police administration and all allied and supporting fields.

(5) Approve facilities for school operation by or for any municipality, the state or any political subdivision thereof for the specific purpose of training police officers and police recruits.

(6) Issue certification to persons who, by reason of experience and completion of in-service, advanced education or specialized training, are especially qualified for particular aspects or classes of police work.

(7) Make or encourage studies on any aspect of police education and training or recruitment. [Acts 1970 (Adj.S.), ch. 575, § 2.]

INTRASTATE COMMUNICATION OF CRIMINAL STATISTICS

38-1201. System established. — The commissioner of the Tennessee department of safety shall establish a system of intrastate communication of vital statistics and information relating to crime, criminals, and criminal activity. This law shall remain in force only as long as federal funds are available to the state of Tennessee for crime information maintenance and communication. [Acts 1973, ch. 159, § 1.]

38-1202. Reports by state and local agencies. — All state, county, and municipal law enforcement and correctional agencies, and courts, shall submit to the commissioner of the Tennessee department of safety reports setting forth their activities in connection with law enforcement and criminal justice, including uniform crime reports. [Acts 1973, ch. 159, § 2.]

DESTRUCTION OF RECORDS UPON DISMISSAL OR ACQUITTAL

40-4001. Destruction of records.—All public records of a person who has been charged with a misdemeanor or a felony, and which charge has been dismissed, or a no true bill returned by a grand jury, or a verdict of not guilty returned by a jury or a conviction which has by appeal been reversed, shall, upon petition by said person to the court having jurisdiction in such previous action, be removed and destroyed without cost to said person. [Acts 1973, ch. 318, § 1; 1975, ch. 193, § 1.]

40-4002. Officials required to destroy. — The chief administrative official of the municipal, county, or state agency and the clerk of the court where such records are recorded shall remove and destroy such records within a period of sixty (60) days from the date of final disposition of such charge. [Acts 1973, ch. 318, § 2.]

40-4003. Prior charges. — The provisions of this chapter shall apply to those persons charged with a misdemeanor or a felony prior to July 1, 1973, if such person shall petition to the court having jurisdiction in such previous action as provided in § 40-4001. [Acts 1973, ch. 318, § 3.]

40-4004. Penalties. — Any person who shall violate the provisions of this chapter shall be guilty of a misdemeanor and shall be fined not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000) and imprisoned in the county jail or workhouse not less than thirty (30) days and not more than eleven (11) months and twenty-nine (29) days. [Acts 1973, ch. 318, § 4.]

40-2044. Copying certain books, papers and documents held by attorney for state. — Upon motion of a defendant, or his attorney, at any time after the finding of an indictment or presentment, the court shall order the attorney for the state, or any law enforcement officer, to permit the attorney for the defendant to inspect and copy or photograph designated books, papers, documents or tangible objects, obtained from or belonging to the defendant or obtained from others which are in possession of, or under the control of the attorney for the state or any law enforcement officer. The order may specify a reasonable time, place and manner of making the inspection, and of taking the copies or photographs and may prescribe such terms and conditions as are just. However, such inspection, copying or photographing shall not apply to any work product of any law enforcement officer or attorney for the state or his agent or to any oral or written statement given to any such officer or attorney for the state or his agent by any witness other than the defendant. [Acts 1968 (Adj. S.), ch. 415, § 1.]

EXECUTIVE DEPARTMENTAL ORDER

July 1975

Sets forth requirements and procedures whereby an individual may obtain a copy of his or her arrest record consisting only of arrests in the State of Tennessee, as may be maintained by the Identification Section, Tennessee Bureau of Criminal Identification.

This order provides that an individual may present his request in person, during regular office hours to the TBCI Identification Section, Andrew Jackson State Office Building, Nashville, Tennessee. A fee of $7.00 will be required in cash, certified check or money order, payable to the Tennessee Bureau of Criminal Identification.

For satisfactory proof of identity, the individual making the request in person shall be fingerprinted by a member of the TBCI Identification Section.

This order provides that a person may obtain a copy of his arrest record by submitting a written request, by the United States mails, to the Tennessee Bureau of Criminal Identification, Identification Section, 1206 Andrew Jackson State Office Building, Nashville, Tennessee, 37219, accompanied by satisfactory proof of identity, and a certified check or money order in the amount of $7.00, payable to the Tennessee Bureau of Criminal Identification. Satisfactory proof of identity shall consist of name, date and place of birth, and a set of legible rolled-inked fingerprint impressions recorded on fingerprint cards, commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

The individual requesting to review or to obtain a copy of his record is responsible for complying with the necessary procedures. Arrest records will be produced only to the individual of the record. A person who believes his identification record is incomplete, or otherwise incorrect, must apply directly to the contributor of the questioned information for desired or necessary changes. The TBCI Identification Section will, upon receipt of an official communication from the originating contributing agency, make any changes necessary in accordance with the information supplied by the agency.

This order further requires that an Identification Review Board shall this date be established. This board shall consist of three members, to include the agent supervisor, or his designee, of the TBCI Identification Section, a member of the TBCI Criminal Justice Section and a member of the Tennessee Department of Safety, as appointed by the Director, TBCI, or by the Commissioner of the Tennessee Department of Safety.

The primary function and duties of the members of this board shall be to arbitrate any dispute, between the individual requesting a correction of his identification arrest record and the arresting contributing agency, which has not been resolved.

The individual of record and the contributing agency of arrest must supply the board with any required information requested concerning the dispute. The board shall notify the complainant within a period of 60 days after the date of the complaint to appear before the board for its findings.

Robert C. Goodwin

Robert C. Goodwin, Director, TBCI
July 1, 1975

Order amended January 27, 1976
to include mailed requests.

Access and Review Procedures

These rules and regulations are promulgated pursuant to the Tennessee Uniform Administrative Procedures Act to provide a means by which an individual may inspect his or her criminal records and correct any errors therein. These regulations will be published in the Bulletin of the Secretary of State in accordance with T.C.A. 4-510(d).

SECTION 1. An individual may inspect criminal history record information maintained at the central repository by appearing at the ISSD computer center, Andrew Jackson Building, Nashville, between the hours of nine and three, Monday through Friday. An individual may inspect criminal history record information at any one of the terminals which access the Central Repository.

SECTION 2. Before an individual may review or challenge his record, he must verify his identity by fingerprint comparisons and produce documented identification. Any defense counsel may review his client's criminal history record for the purpose of review and challenge; documented evidence of counsel's power of attorney is required in addition to fingerprint identification of his client.

The Central Repository will assure the accuracy of the identifiers. A denial of review and the reason therefore shall be indicated in writing and sent to the individual within thirty days of his request for review.

SECTION 3. When an individual returns to review his criminal history record, he must produce documentary evidence of identity. An individual inspecting his or her criminal history record may make notes of the information but he or she can not require the agency to make a copy of any information or to remove any document in order to make a copy.

The criminal justice agency may provide the individual with a copy of relevant portions of the record should the individual need it in order to pursue or to file a challenge. A copy would be marked to indicate that it is for the purpose of challenge only.

SECTION 4. An individual may challenge his record only after compliance with the procedures of verification and after providing written notice setting forth the portion of the information challenged, documentation or other evidence supporting the challenge or explanation of the reason for the challenge, and the change requested to correct or complete the record. The notice shall contain a sworn statement attesting to the fact that the information in support of the challenge is accurate and is made in good faith.

The Central Repository will audit that portion of the criminal history record which is challenged. On completion of the audit, the Central Repository shall notify within thirty days the individual who challenged the record of the action taken to correct the record or of the denial of the challenge. Reason for denial shall be sent to the individual on denial.

SECTION 5. Notice sent to individuals shall include information or procedures for appeal. If appeal is requested by the individual, then the Commissioner of Safety shall request the Secretary of State to appoint a hearing examiner to hear the appeal. The provisions of the Uniform Administrative Procedures Act shall apply.

A person aggrieved by a decision on an administrative appeal, including the Central Repository or a criminal justice agency, may seek justicial review in accordance with the Uniform Administrative Procedures Act.

EXECUTIVE ORDER

BY THE GOVERNOR

No. 9

AN ORDER DESIGNATING THE DEPARTMENT OF SAFETY AS THE PRINCIPAL AGENCY FOR THE DEVELOPMENT OF A CRIMINAL JUSTICE INFORMATION SYSTEM

WHEREAS, there is a growing concern over the security and confidentiality of criminal justice information; and

WHEREAS, the participants in the Criminal Justice Information System within the state government and in local government within the state are agencies under separate administrative responsibility; and

WHEREAS, it appears necessary for one criminal justice agency to provide the appropriate development of systems specifications and to be responsible for the coordination, management and control of this system; and

WHEREAS, the Department of Safety by legislation is responsible for the collection and preservation of Uniform Crime Reports; and

WHEREAS, by National Crime Information Center regulations, the Commissioner of the Department of Public Safety is the designated individual to contract for services through the National Crime Information Center;

NOW, THEREFORE, I, RAY BLANTON, Governor of the State of Tennessee, by virtue of the authority vested in me by the Constitution and laws of this State, do hereby designate the Department of Public Safety, under the direction of the Commissioner of Public Safety, as the state department responsible for the development, coordination and management of the Criminal Justice Information System for the State of Tennessee. All state agencies participating in this system are to cooperate with the Department of Safety in this matter.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 13th day of May, 1975.

Ray Blanton
Governor

Art. 6252—17a. Access by public to information in custody of governmental agencies and bodies

Declaration of policy

Section 1. Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of Texas that all persons are, unless otherwise expressly provided by law, at all times entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. To that end, the provisions of this Act shall be liberally construed with the view of carrying out the above declaration of public policy.

Definitions

Sec. 2. In this Act:

(1) "Governmental body" means:

(A) any board, commission, department, committee, institution, agency, or office within the executive or legislative branch of the state government, or which is created by either the executive or legislative branch of the state government, and which is under the direction of one or more elected or appointed members;

(B) the commissioners court of each county and the city council or governing body of each city in the state;

(C) every deliberative body having rulemaking or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city;

(D) the board of trustees of every school district, and every county board of school trustees and county board of education;

(E) the governing board of every special district;

(F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof;

(G) the Judiciary is not included within this definition.

(2) "Public records" means the portion of all documents, writings, letters, memoranda, or other written, printed, typed, copied, or developed materials which contains public information.

Public information

Sec. 3. (a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to

the public during normal business hours of any governmental body, with the following exceptions only:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;

(3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;

(4) information which, if released, would give advantage to competitors or bidders;

(5) information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor;

(6) drafts and working papers involved in the preparation of proposed legislation;

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas [1] are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(9) private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy;

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency;

(12) information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act; [2]

(13) geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency;

(14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, or that student's parent, legal guardian, or spouse;

(15) birth and death records maintained by the Bureau of Vital Statistics in the State of Texas; [3]

(16) the audit working papers of the State Auditor.

(b) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated

in this section. This section is not authority to withhold information from individual members or committees of the legislature to use for legislative purposes.

(c) The custodian of the records may in any instance within his discretion make public any information contained within Section 3, Subsection (a) 6, 9, 11, and 15.

(d) It is not intended that the custodian of public records may be called upon to perform general research within the reference and research archives and holdings of state libraries.

[1] See Title 14 Appendix, foll. art. 320a—1.
[2] See article 581—4, subsec. A.
[3] See article 4477, rule 34a et seq.

Application for public information

Sec. 4. On application for public information to the custodian of information in a governmental body by any person, the custodian shall promptly produce such information for inspection or duplication, or both, in the offices of the governmental body. If the information is in active use or in storage and, therefore, not available at the time a person asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available for the exercise of the right given by this Act. Nothing in this Act shall authorize any person to remove original copies of public records from the offices of any governmental body without the written permission of the custodian of the records.

Custodian of public records described

Sec. 5. (a). The chief administrative officer of the governmental body shall be the custodian of public records, and the custodian shall be responsible for the preservation and care of the public records of the governmental body. It shall be the duty of the custodian of public records, subject to penalties provided in this Act, to see that the public records are made available for public inspection and copying; that the records are carefully protected and preserved from deterioration, alteration, mutilation, loss, removal, or destruction; and that public records are repaired, renovated, or rebound when necessary to preserve them properly. When records are no longer currently in use, it shall be within the discretion of the agency to determine a period of time for which said records will be preserved.

(b) Neither the custodian nor his agent who controls the use of public records shall make any inquiry of any person who applies for inspection or copying of public records beyond the purpose of establishing proper identification and the public records being requested; and the custodian or his agent shall give, grant, and extend to the person requesting public records all reasonable comfort and facility for the full exercise of the right granted by this Act.

Specific information which is public

Sec. 6. Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

(1) reports, audits, evaluations, and investigations made of, for, or by, governmental bodies upon completion;

(2) the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of governmental bodies;

(3) information in any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by governmental bodies, not otherwise made confidential by law;

(4) the names of every official and the final record of voting on all proceedings in governmental bodies;

(5) all working papers, research material, and information used to make estimates of the need for, or expenditure of, public funds or taxes by any governmental body, upon completion of such estimates;

(6) the name, place of business, and the name of the city to which local sales and use taxes are credited, if any, for the named person, of persons reporting or paying sales and use taxes under the Limited Sales, Excise, and Use Tax Act; [1]

(7) descriptions of an agency's central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(8) statements of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(9) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(10) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency;

(11) each amendment, revisions, or repeal of 7, 8, 9 and 10 above;

(12) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(13) statements of policy and interpretations which have been adopted by the agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public;

(15) information currently regarded by agency policy as open to the public.

[1] See V.A.T.S. Tax.-Gen. art. 20.01 et seq.

Attorney general opinions

Sec. 7. (a) If a governmental body receives a written request for information which it considers within one of the exceptions stated in Section 3 of this Act, but there has been no previous determination that it falls within one of the exceptions, the governmental body within a reasonable time, no later than ten days, after receiving a written request must request a decision from the attorney general to determine whether the information is within that exception. If a decision is not so requested, the information shall be presumed to be public information.

(b) The attorney general shall forthwith render a decision, consistent with standards of due process, to determine whether the requested information is a public record or within one of the above stated exceptions. The specific information requested shall be supplied to the attorney general but shall not be disclosed until a final determination has been made. The attorney general shall issue a written opinion based upon the determination made on the request.

Writ of mandamus

Sec. 8. If a governmental body refuses to request an attorney general's decision as provided in this Act, or to supply public information or information which the attorney general has determined to be a public record, the person requesting the information or the attorney general may seek a writ of mandamus compelling the governmental body to make the information available for public inspection.

Cost of copies of public records

Sec. 9. (a) The cost to any person requesting noncertified photographic reproductions of public records comprised of pages up to legal

size shall not be excessive. The State Board of Control shall from time to time determine the actual cost of standard size reproductions and shall periodically publish these cost figures for use by agencies in determining charges to be made pursuant to this Act.

(b) Charges made for access to public records comprised in any form other than up to standard sized pages or in computer record banks, microfilm records, or other similar record keeping systems, shall be set upon consultation between the custodian of the records and the State Board of Control, giving due consideration to the expenses involved in providing the public records making every effort to match the charges with the actual cost of providing the records.

(c) It shall be the policy of all governmental bodies to provide suitable copies of all public records within a reasonable period of time after the date copies were requested. Every governmental body is hereby instructed to make reasonably efficient use of each page of public records so as not to cause excessive costs for the reproduction of public records.

(d) The charges for copies made in the district clerk's office and the county clerk's office shall be as otherwise provided by law.

(e) No charge shall be made for one copy of any public record requested from state agencies by members of the legislature in performance of their duties.

(f) The charges for copies made by the various municipal court clerks of the various cities and towns of this state shall be as otherwise provided by ordinance.

Distribution of confidential information prohibited

Sec. 10. (a) Information deemed confidential under the terms of this Act shall not be distributed.

(b) Any person who violates Section 10(a) of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail not to exceed six (6) months or fined in an amount not to exceed $1,000, or by both such fine and confinement.

Bond for payment of costs for preparation of public records or cash prepayment

Sec. 11. A bond for payment of costs for the preparation of such public records, or a prepayment in cash of the anticipated costs for the preparation of such records, may be required by the head of the department or agency as a condition precedent to the preparation of such record where the record is unduly costly and its reproduction would cause undue hardship to the department or agency if the costs were not paid.

Penalties

Sec. 12. Any person who wilfully destroys, mutilates, removes without permission as provided herein, or alters public records shall be guilty of a misdemeanor and upon conviction shall be fined not less than $25 nor more than $4,000, or confined in the county jail not less than three days nor more than three months, or both such fine and confinement.

Procedures for inspection of public records

Sec. 13. Each governmental body may promulgate reasonable rules of procedure by which public records may be inspected efficiently, safely, and without delay.

Interpretation of this act

Sec. 14. (a) This Act does not prohibit any governmental body from voluntarily making part or all of its records available to the public, unless expressly prohibited by law; provided that such records shall then be available to any person.

(b) This Act does not authorize the withholding of information or limit the availability of public records to the public, except as expressly so provided.

(c) This Act does not give authority to withhold information from individual members or committees of the Legislature of the State of Texas to use for legislative purposes.

(d) This Act shall be liberally construed in favor of the granting of any request for information.

(e) Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

Severability

Sec. 15. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Acts 1973, 63rd Leg., p. 1112, ch. 424, eff. June 14, 1973. Sec. 14(e) added by Acts 1975, 64th Leg., p. 809, ch. 314, § 1, eff. May 27, 1975.

CHAPTER 50—INFORMATION PRACTICES

63-50-1. Citation.—This act shall be known and may be cited as the "Utah Information Practices Act."

63-50-2. Purpose.—(1) It is the purpose of this act to establish fair information practices to ensure that the rights of persons are protected and that proper remedies are established to prevent abuse of personal information.

(2) The legislature of the state of Utah finds that:

(a) The use of information for purposes other than those purposes to which a person knowingly consents can seriously endanger a person's right to privacy and confidentiality.

(b) In order to increase participation of persons in the prevention and correction of unfair information practices, opportunity for hearing and remedies must be provided.

(c) In order to ensure that information collected, stored, and disseminated about persons is consistent with fair information practices while safeguarding the interests of the persons and allowing the state to exercise its proper powers, a definition of rights and responsibilities must be established.

History: L. 1975, ch. 194, § 2.

63-50-3. Definitions.—As used in this act:

(1) "Secretary" means the secretary of state.

(2) "Data on individuals" includes all records, files and processes which contain any data on any individual and which are kept or intended to be kept by state government on a permanent or semi-permanent basis, including, but not limited to, that data by which it is possible to identify with reasonable certainty the person to whom such information pertains.

(3) "Responsible authority" means any state office or state official established by law or executive order as the body responsible for the collection or use of any set of data on individuals or summary data.

(4) "Summary data" means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable.

(5) "Public data" means data on individuals collected and maintained by state government which, in the opinion of the state records committee, should be open to the public.

(6) "Confidential data" means data on individuals collected and maintained by state government which, in the opinion of the state records committee, should be available only to appropriate agencies for the uses specified in subsection (2) of section 63-50-6 and to others by express consent of the individual, but not to the individual himself.

(7) "Private data" means data on individuals collected and maintained by state government which, in the opinion of the state records committee, should be available only to the appropriate agencies for the uses specified in subsection (2) of section 63-50-6, to others by the express consent of the individual, and to the individual himself or next of kin when information is needed to acquire benefits due a deceased person.

History: L. 1975, ch. 194, § 3.

63-50-4. Secretary—Identify responsible authorities—Employ assistants.—The secretary is directed to identify responsible authorities in state government involved in the collection or use of data on individuals or summary data. The secretary is authorized to employ such assistants as may be reasonably required pursuant to his obligations under this act.

History: L. 1975, ch. 194, § 4.

63-50-5. Annual report—Legislature and governor—Contents.—(1) On or before December 1 of each year, the secretary shall prepare a report, or a revision of the previous year's report, on information practices for presentation to the legislature and to the governor. Summaries of the report shall be available to the public at a nominal cost. The report shall contain, to the extent feasible, information including, but not limited to:

(a) A complete listing of all systems of confidential and private data on individuals which are kept by the state, a description of the kinds of information contained therein, and the reason that the data is kept;

(b) The title, name and address of the responsible authority for each system of confidential or private data on individuals;

(c) The policies and practices of the responsible authority and the secretary regarding data storage, duration of retention of data and disposal thereof;

(d) A description of the provisions for maintaining the integrity of the data pursuant to subsection (4) of section 63-50-6;

(e) The procedures, pursuant to section 63-50-7, whereby an individual can:

(i) Be informed if he is the subject of any data on individuals in the system;

(ii) Gain access to that data; and

(iii) Contest the accuracy, completeness and pertinence of that data and necessity for retaining it; and

(f) Any recommendations concerning appropriate legislation.

(2) Each responsible authority shall furnish the secretary with the data set forth in subsection (1) at a time set by the secretary to enable preparation of that annual report.

History: L. 1975, ch. 194, § 5.

63-50-6. Rules and regulations—Standards.—The secretary shall promulgate rules and regulations in accordance with sections 63-46-5 and 63-46-8. These rules and regulations shall apply only to state systems of data on individuals or summary data and shall provide for the implementation of the enforcement and administration of the following standards:

(1) Collection of data on individuals and establishment of related files of the data in state government shall be limited to that necessary for the administration and management of programs enacted by the legislature or by executive order.

(2) Data on individuals shall be under the jurisdiction of the responsible authority identified and designated by the secretary. The responsible authority shall document and file with the secretary the nature of all data on individuals collected and stored and the need for, and intended use of, the data and any other information required.

(3) The use of summary data under the jurisdiction of one or more responsible authorities shall be permitted, subject to the requirement that the data be summarized under the direction of, and by, that responsible authority. Requests for use of any data must be in writing, stating the intended use.

(4) Appropriate safeguards shall be established in relation to the collection, storage, dissemination and use of data on individuals to assure that all data is accurate, complete and current. Emphasis shall be placed on the data security requirements of computerized files which are accessible directly by means of telecommunication, including security during transmission.

(5) Data on individuals shall be stored only so long as necessary to the administration of authorized programs as authorized by statute or by the state records committee.

History: L. 1975, ch. 194, § 6.

63-50-7. Rights of individuals—Duties of responsible authorities.—The rights of individuals on whom data is stored or is to be stored and the responsibilities of each responsible authority in regard to that data shall be as follows:

(1) The purposes for which the data on individuals is collected and used, or is to be collected and used, shall be filed in writing by the responsible authority with the secretary and shall be a matter of public record.

(2) An individual requested to supply confidential or private data shall be informed of the intended uses of that data.

(3) Any individual refusing to supply confidential or private data shall be informed by the requesting party of any known consequence arising from that refusal.

(4) No confidential or private data shall be used other than for the stated purposes nor shall it be disclosed to any person other than the individual to whom the data pertains, without express consent of that individual, except that next of kin may obtain information needed to acquire benefits due a deceased person.

(5) Upon request to the secretary, an individual shall be informed whether he is the subject of any data on individuals, informed of the content and meaning of that data, and shown the data without any charge. The secretary shall charge an appropriate fee for any additional requests within a six-month period unless the requested information is in dispute.

(6) An individual shall have the right to contest the accuracy or completeness of any data on individuals about him. If that data is contested, the individual shall notify, in writing, the responsible authority of the

nature of the disagreement. Within thirty days from that notice, the responsible authority shall either correct the data if it is found to be inaccurate or incomplete and notify past recipients of the inaccurate or incomplete data of the change, or shall notify the individual of his disagreement with the statement of contest. Any person aggrieved by the determination of that responsible authority may appeal that determination to the secretary and, if still dissatisfied, may bring appropriate action pursuant to section 63-46-9. Data in dispute shall not be disclosed except under conditions required by law or regulation and even then, only if the individual's statement of disagreement is included with the disclosed data.

History: L. 1975, ch. 194, § 7.

63-50-8. Violation by responsible authority—Action against state—Willful violation—Exemplary damages—Action in district court.—(1) Any responsible authority who violates any provision of this act shall be liable to any person, suffering damage as a result thereof, and the person damaged may bring an action against the state to recover any damages sustained, plus costs incurred and reasonable attorney fees.

(2) Any responsible authority who willfully violates any provision of this act shall, in addition to those remedies provided under subsection (1), be liable for exemplary damages of not less than $100 nor more than $1,000 for each violation.

(3) Any responsible authority which violates or proposes to violate the provisions of this act may be enjoined by any district court in this state. The court may make any order or judgment as may be necessary to prevent the use or employment by any person of such violations of this act.

History: L. 1975, ch. 194, § 8.

63-50-9. Willful violation—Class C misdemeanor—Discharge or suspension of public employee.—(1) Any person who willfully violates any provision of this act or the rules and regulations promulgated pursuant thereto shall be guilty of a class C misdemeanor.

(2) Any public employee who willfully violates any provision of this act or the rules and regulations promulgated pursuant thereto shall be subject to suspension without pay or discharge, after a hearing as provided by law.

History: L. 1975, ch. 194, § 9.

63-50-10. Criminal investigations—Prior rights to public records.—No provisions of this act shall be deemed to apply to data on individuals relating to criminal investigations, nor shall they be construed to restrict or modify the rights heretofore existing of access to public records.

History: L. 1975, ch. 194, § 10.

78-26-1. Classes of public writings.—Public writings are divided into four classes:

(1) Laws.

(2) Judicial records.

(3) Other official documents.

(4) Public records, kept in this state, of private writings, which such records may be made by handwriting, typewriting, or as a photostatic microphotographic, photographic, or similar reproduction of such private writings.

78-26-2. Right to inspect and copy.—Every citizen has a right to inspect and take a copy of any public writing of this state except as otherwise expressly provided by statute.

78-26-3. Officials to furnish certified copies.—Every public officer having the custody of a public writing which a citizen has the right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor.

77-35-17.5. Expungement of court records.—(1) (a) Any person who has been convicted of any crime within this state may petition the convicting court for a judicial pardon and for the expungement of his record in that court. At the time the petition is filed, the court shall set a date for a hearing and notify the prosecuting attorney for the jurisdiction of the pendency of the petition and of the date set for the hearing. Any person who may have relevant information about the petitioner may testify at the hearing and the court, in its discretion, may request a written evaluation of the adult parole and probation section of the Utah division of corrections.

(b) If the court finds that the petitioner, for a period of five years in the case of a class A misdemeanor or felony, or for a period of one year in the case of other misdemeanors, since his release from incarceration or probation, has not been convicted of a felony or of a misdemeanor involving moral turpitude and that no proceeding involving such a crime is pending or being instituted against the petitioner and, further, finds that the rehabilitation of the petitioner has been attained to the satisfaction of the court, it shall enter an order that all records in the petitioner's case in the custody of that court or in the custody of any other court, agency or official, be sealed. The provisions of this paragraph shall not apply to violations for the operation of motor vehicles under Title 41, of the Utah Code.

(c) Upon the entry of the order in those proceedings, the petitioner shall be deemed judicially pardoned and the petitioner may thereafter respond to any inquiries relating to convictions of crimes as though that conviction never occurred.

(2) (a) In any case in which a person has been arrested with or without a warrant, that individual after twelve months, provided there have been no intervening arrests, may petition the court in which the proceeding occurred, or, if there were no court proceedings, any court in the jurisdiction where the arrest occurred, for an order expunging any and all records of arrest and detention which may have been made, if any of the following occurred:

(i) He was released without the filing of formal charges;

(ii) Proceedings against him were dismissed, he was discharged without a conviction and no charges were refiled against him within thirty days thereafter, or he was acquitted at trial; or

(iii) The record of any proceedings against him has been expunged pursuant to subsection (1).

(b) If the court finds that the petitioner is eligible for relief under this subsection, it shall issue its order granting the relief prayed for and further directing the law enforcement agency making the initial arrest to retrieve any record of that arrest which may have been forwarded to the Federal Bureau of Investigation. Thereafter, the arrest, detention, and any further proceedings in the case shall be deemed not to have occurred, and a petitioner may answer accordingly any question relating to their existence.

(c) This subsection shall apply to all arrests and any proceedings which occurred before, as well as those which may occur after, the effective date of this act.

(3) Copies of any order issued pursuant hereto shall be sent to each court, agency or official named in the order.

(4) Inspection of the records shall thereafter be permitted by the court only upon petition by the person who is the subject of those records and only to the persons named in that petition.

77-59-3. Commissioner—Compensation—Assistants.—The State Bureau of Criminal Identification shall be under the supervision and control of the commissioner of public safety. The commissioner shall receive no extra compensation or salary as head of the bureau but shall be reimbursed for expenses actually and necessarily incurred in the performance of his duties as supervisor of the bureau. The commissioner shall appoint such deputies, inspectors, examiners, clerical workers and other employees as may be required to properly discharge the duties of the bureau which employees and assistants shall serve at the pleasure of the commissioner and whose salaries shall be fixed in accordance with standards adopted by the department of finance.

77-59-5. General duties and functions of bureau and employees.—The bureau shall procure and file for record, plates, photographs, outline pictures, descriptions, information, statistics, fingerprints and measurements, wherever procurable of persons who are fugitives from justice, wanted or missing or who have been or shall hereafter be convicted of felony or an indictable misdemeanor under the laws of any state or of the United States and of all well-known and habitual criminals, and file the same with information and descriptions received by it in the course of the administration of the bureau; and it shall make a complete and systematic record and index of the same, providing thereby a method of convenient consultation and comparison. So far as practicable such records shall coincide in form with those of the Federal Bureau of Investigation in order to facilitate interchange of records. It shall be the further duty of the employees of the department to prevent and detect crime, to apprehend criminals and to enforce the criminal laws of the state and to perform such other related duties as may be imposed upon them by the legislature.

77-59-6. Identification and prior criminal record—Collection—Processing—Forwarding—Duty of commissioner.—The commissioner of public safety shall have the duty and responsibility to:

(1) Adopt rules prescribing systems of identification, known as the fingerprint system, or any system of measurements that may from time to time be adopted or used to facilitate the enforcement of the law in the various law enforcement agencies throughout the nation; and shall use its discretion in improving the methods of identification and in adopting systems of measurements, processes, operation, plates, photographs and descriptions of all persons confined in penal institutions of the state, in accordance with approved systems of identification of criminals.

(2) Collect information concerning the number and nature of offenses known to have been committed in this state, the legal action taken in connection with those offenses from the inception of the complaint to the final discharge of the defendant and such other information and statistics as he may determine to be useful in the study of crime and the administration of justice, including but not limited to any data requested by the FBI under its system of uniform crime reports for the United States.

(3) Furnish all reporting officials with forms and instructions and specify in detail the nature of the information required, the time it is to be forwarded, the method of classifying it, and any other matters as shall facilitate the collection and compilation of that data.

77-59-6.5. Assistance and instructions—Annual reports—Validation of information.—In addition to such other powers and responsibilities as are granted by this act, the bureau shall have the following powers and responsibilities:

(1) To offer assistance and, when practicable, instructions to all local law enforcement agencies in establishing an efficient crime record system;

(2) To correlate all information submitted and compile and submit annual reports to the governor and the legislature based thereon, a copy of which shall be furnished to all law enforcement agencies and made available to the public;

(3) To audit and validate all information received to determine the validity of the information received whenever the information does not meet the validation standards built into the system and on a random basis as the bureau may deem necessary to ensure the validity of that information.

77-59-7. System of recording—Visitation to secure data.—The bureau shall adopt a system of recording, with necessary indexes, and keep complete records of all reports filed with it, and of all property stolen, lost or found and from time to time shall improve such records so as to provide for the further identification of persons guilty of crime. The commissioner and persons designated by him are authorized to call upon any of the law enforcement officers of the state, the warden of the state prison and the keeper of any jail or any penal institution which may hereafter be established to furnish information which will aid in making up the records required to be kept; and all officers called upon are required to furnish the information requested by the bureau or the persons designated by it. The commissioner and all persons acting under him are hereby given authority, upon showing credentials, to enter any jail, state prison or other place of confinement maintained by the state or any subdivision thereof

to take or cause to be taken fingerprints or photographs, and make investigation relative to any person confined therein, for the purpose of obtaining information which will lead to the identification of criminals; and every person, who has charge or custody of public records or documents, from which it may reasonably be supposed that information, described in sections 77-59-9, 77-59-11, 77-59-12 and 77-59-13 hereof, can be obtained shall grant access thereto to any employee of the bureau upon written authorization by the director [commissioner] or shall produce such records or documents for the inspection and examination of such employee.

History: L. 1927, ch. 84, § 8; R. S. 1933 & C. 1943, 22-0-9; L. 1943, ch. 37, § 1; 1953 (1st S. S.), ch. 4, § 2.

Compiler's Notes.

The 1953 amendment rewrote this section transferring the powers and duties of former board of managers to the commissioner.

The bracketed word "commissioner" was inserted by the compiler. See 77-59-1.1.

77-59-8. Commissioner—Powers and duties—Appointment, promotion and removal of employees—Bonds.—The commissioner shall, and within the limits of any appropriation made for such purpose, appoint and promote such employees to the ranks, grades and positions as are deemed necessary for the efficient administration of the bureau under the provisions of this act. He shall have authority to formulate, put into effect, alter and revise such regulations for the administration of the bureau as seem expedient, and may discharge, demote or temporarily suspend any employee for misconduct, incompetence or failure to perform his duties or to properly observe rules and regulations of the bureau and shall have authority to determine the conditions of bonds to be required of employees in such amounts as shall be prescribed by the state department of finance.

History: L. 1943, ch. 37, § 2; C. 1943, Supp., 22-0-10; L. 1953 (1st S. S.), ch. 4, § 2.

Compiler's Note.

The 1953 amendment substituted "commissioner" for "director" and deleted the provisions requiring approval of the board.

77-59-9. Duty of sheriff and police chiefs to transmit data to bureau.—Every sheriff and every chief police officer of the state and of any local government unit shall transmit to the bureau, so far as available, as provided in section 77-59-14 hereof:

(a) The names, fingerprints, photographs, and such other data as the director may from time to time prescribe of all persons arrested for, or suspected of:

(1) An indictable offense, or such nonindictable offense as is or may hereafter be, included in the compilations of the division of investigation of the U. S. department of justice;

(2) Being fugitive from justice;

(3) Being vagrants;

(4) Being habitual users of narcotics, or other habit-forming drugs;

(5) Being in possession of stolen goods or of goods believed to have been stolen; and

(6) Being in possession of illegal or illegally carried weapons or in possession of burglar's tools, tools for the defacing or altering of the numbers of automobiles, automobile parts, automobile engines, or automobile engine parts; or illegally in possession of tools, supplies, or other articles used in the manufacture or alteration of money or bank notes or in any wise making counterfeit thereof; or illegally in possession of highpower explosives, infernal machines, bombs, or other contrivances

reasonably believed by the arresting person to be intended to be used for unlawful purposes.

(b) The fingerprints, photographs, and other data prescribed by the director concerning unidentified dead persons, amnesia victims and in so far as available, missing persons.

(c) A record of the indictable offenses and of such nonindictable offenses as are, or may hereafter be, included in the compilation of the Federal Bureau of Investigation, and which are committed within the jurisdiction of the reporting officer, including a statement of the facts of the offense, and so far as known, a description of the offender, the method of operation, the official action taken and such other information as the director may require.

(d) Copies of such reports as are now required by law to be made or as may hereafter be so required, and as shall be prescribed by the director, to be made by pawnshops, second-hand dealers, and dealers in weapons.

(e) Lists of stolen automobiles and of automobiles recovered with their engine and serial numbers, description and other indentification data, and lists of such other classes of stolen property as the director shall prescribe.

77-59-10. Powers of commissioner and employees—Extent of powers.—The commissioner and such of the employees as shall be deputized by him for the purpose shall be vested with the power of peace officers and may exercise their powers as such throughout the state, with the exception of the power to serve civil processes. They shall have, in any part of the state, the same powers with respect to criminal matters and the enforcement of the law relating thereto, as sheriffs and police officers have in their respective jurisdictions and shall have all the immunities and matters of defense now available and hereafter made available to sheriffs and police officers in any suit brought against them in consequence of acts done in the course of their employment; provided, however, that they shall in no wise usurp the powers of the local police and sheriffs, but shall cooperate with them and shall be available when possible to respond to requests from the police and sheriffs to aid in the detection, apprehension and prosecution of criminals; nor shall they in no wise supersede the authority of the local police units unless given special orders under the authority of the governor.

77-59-11. Duties of court clerks, judges and justices—Transmission of data.—Every clerk of a court having original or appellate jurisdiction over indictable offenses, or if there be no clerk, every judge or justice of such court, shall transmit to the bureau, as provided in section 77-59-14 hereof, such statistics and information as the director shall prescribe regarding indictments and information filed in such court and the disposition made of them, pleas, convictions, acquittals, probations granted or denied and any other dispositions of criminal proceedings made in such court.

77-59-13. Penal institutions—Transmission of data.—Every person in responsible charge of an institution to which there are committed persons convicted of crime or juvenile delinquency or criminally insane or mentally incompetent, and every probate officer shall transmit to the bureau as contained in section 77-59-14 hereof:

(a) The names, fingerprints, photographs and other data prescribed by the director of all persons who are received in such institutions for the violation of an indictable offense and of all persons placed on probation for such an offense so far as such information is available.

(b) Full reports of all transfers to or from such institutions, paroles granted and revoked, discharges from such institution or paroles, commutations of sentence and pardons of all persons described in section (a) of this section.

77-59-15. Report on persons released from penal institutions.—It is hereby made the duty of the warden or keeper of the state prison or such other penal institutions as the state may hereinafter establish, when called upon to do so, to furnish a report monthly or oftener, as may be deemed necessary by the bureau, of all persons released therefrom, during the preceding month, indicating how and when released and also furnish a full length photograph of each such person released, the same to be taken immediately prior to date of such release.

77-59-17. Duty of Bureau of Criminal Identification and Investigation—Filing data, fingerprints for parents.—The bureau shall accept and file the names, fingerprints, photographs, and other personal identification data submitted voluntarily by individuals or submitted by parents on behalf of their children for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory, or change of appearance of such person. Any law enforcement officer mentioned in this act shall, when requested so to do by any citizen of the state, take without cost to the citizen, at least two sets of fingerprints of such citizen and forward one copy to the state bureau and one to the Federal Bureau of Investigation, Washington, D. C. It is further provided that such fingerprints of citizens, filed for personal identification shall not be used for any other purpose except under order of a court of competent jurisdiction.

History: L. 1943, ch. 37, § 11; C. 1943, Supp., 22-0-19.

Collateral References.

Criminal Law⇐1222.

24 C.J.S. Criminal Law § 2008 et seq.

77-59-18. Furnishing information to officers and judges.—Upon application the bureau shall furnish a copy of all information available pertaining to the identification and history of any person or persons of whom the bureau has a criminal record or any other information:

(1) To any sheriff or chief police officer of the state or of any local government unit, or to any officer of similar rank and description of any other state, or of the United States, or of any jurisdiction thereof, or of any foreign country, or

(2) To the superintendent or chief officer of any bureau similar in nature to this bureau in any other state or in the United States or in any jurisdiction thereof, or in any foreign country, or

(3) To the prosecuting attorney in any court of this state in which such a person is being tried for any offense, or

(4) To the judge in any court of this state in which such a person is so being tried.

77-59-21. Cooperation with bureaus of other states and federal bureaus. —The bureau shall cooperate with the federal bureau and with similar bureaus in other states and other cities toward the end of developing and carrying on a complete interstate, national and international system of criminal identification, investigation and statistics and further toward attaining this end, every sheriff and every chief police officer of the state and of any local government unit shall speedily transmit directly to the Federal Bureau of Investigation duplicate copies of all the information and data which that division shall from time to time request the commissioner to collect for it.

History: L. 1943, ch. 37, § 15; C. 1943, Supp., 22-0-23; L. 1953 (1st S. S.), ch. 4, § 2.

Compiler's Note.

The 1953 amendment substituted "commissioner" for "director."

77-59-22. Duty to assist other public officers.—The commissioner may on request of any sheriff or chief police officer of any local government unit in the state assist such officer:

(1) in the establishment of local identification records systems;

(2) in investigating the circumstances of any crime and in the identification, apprehension and conviction of the perpetrator or perpetrators thereof, and for this purpose may detail such employee or employees of the bureau, for such length of time as the commissioner deems fit; and

(3) without such request the commissioner shall at the direction of the governor, detail such employee or employees, for such time as the governor may deem fit, to investigate any crime within this state for the purpose of identifying, apprehending and convicting the perpetrator or perpetrators thereof.

77-59-27. Access to—Secrecy of.—Only employees of the bureau and persons specifically authorized by the commissioner shall have access to the files or records of the bureau. No such file or record or information shall be disclosed by any employee of the bureau except to officials as hereinbefore provided and except as may be deemed necessary by the commissioner in the apprehension or trial of persons accused of offenses or in the identifications of persons or of property.

77-59-29. Authority of officials and employees to take fingerprints, photographs.—To the end that the officers and officials described in sections 77-59-9, 77-59-11, 77-59-12 and 77-59-13 hereof, may be enabled to transmit the reports required by them in the said sections, such officers and officials shall have the authority and duty to take or cause to be taken, fingerprints, photographs, and other data of the persons described in the said sections 77-59-9, 77-59-11, 77-59-12 and 77-59-13. A like authority shall be had by employees of the bureau who are authorized to enter any institution under the provisions of section 77-59-7 hereof, as to persons confined in such institutions.

77-59-31. Crimes and penalties—Violation of act.—Any person who shall wilfully give any false information or wilfully withhold information in any report lawfully required of him under the provisions of this act, or who shall remove, destroy, alter, or mutilate any file or record of the bureau, shall be guilty of a misdemeanor, and such person shall, upon conviction thereof, be punished by a fine of not more than $..... or by imprisonment in the county jail for not more than ..... days or by both such fine and imprisonment in the discretion of the court.

History: L. 1943, ch. 37, § 25; C. 1943, Supp., 22-0-33.

Collateral References.

Criminal Law⇐1222.

24 C.J.S. Criminal Law § 2008 et seq.

77-59-32. Construction of act.—This act shall be liberally construed to the end that offenders may be promptly and certainly identified, apprehended and prosecuted.

X. Security and Privacy Committee

Executive Order No. 31

[Security and Privacy Committee]

WHEREAS, information pertaining to individuals and their involvement in the criminal justice system is maintained in and by the State of Vermont, and

WHEREAS, the rights of privacy of those individuals are affected by the manner in which that information is maintained and used, and

WHEREAS, the government of the United States of America has promulgated various regulations requiring adherence to certain standards in the maintenance and use of such information, and

WHEREAS, those rights to privacy can best be protected, and the federal requirements best complied with, by planning and implementing procedures specifically designed for use in the State of Vermont;

NOW THEREFORE, I, Thomas P. Salmon, by virtue of the power vested in me as Governor of Vermont and pursuant to 3 V.S.A. Chapter 41 do hereby order and direct that a committee, to be titled the Security and Privacy Committee, be established in order to:

1. Adopt policy positions on security and privacy issues concerning information systems at the State and local level;
2. Promulgate the State Plan as required by the Federal Regulations as set forth in 28 CFR Part 20 et seq.;
3. Seek, through appropriate methods, the implementation and enforcement of procedures designed to assure the security and privacy of publicly held personal information.

Dated June 9, 1976.

Chapter II, section 8 of the Constitution.—Amended 1973, No. 78, § 2, eff. April 23, 1973.

1973 amendment. Amended section generally.

½. Constitutionality. This section does not unconstitutionally abridge the rule-making power of the General Assembly under Chapter II, section 6 of the state constitution. 1974 Op. Atty. Gen. 191.

Subchapter 3. Access to Public Records

§ 315. Statement of policy

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed with the view towards carrying out the above declaration of public policy.—Added 1975, No. 231 (Adj. Sess.).

Revision note. Designation of opening paragraph as subsec. (a) was omitted to conform to V.S.A. style.

§ 316. Access to public records and documents

(a) Any person may inspect or copy any public record or document of a public agency, on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and twelve o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; provided, however, if the public agency is not regularly open to the public during those hours, inspection or copying may be made during customary office hours.

(b) If a photocopying machine or other mechanical device maintained for use by a public agency is used by the agency to copy the public record or document requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public agency. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee

is established for the copy, no additional costs or fees shall be charged.

(c) A public agency having photocopying or other mechanical copying facilities shall utilize those facilities to produce copies. If the public agency does not have such facilities, nothing in this section shall be construed to require the public agency to provide or arrange for photocopying service, to use or permit the use of copying facilities other than its own, to permit operation of its copying facilities by other than its own personnel, to permit removal of the public record by the requesting person for purposes of copying, or to make its own personnel available for making handwritten or typed copies of the public record or document requested.

(d) A public agency may make reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage.—Added 1975, No. 231 (Adj. Sess.).

§ 317. Definitions; public agency; public records and documents

(a) As used in this subchapter, "public agency" or "agency" means any agency, board, department, commission, committee, or authority of the state. Towns, cities, counties, schools and all subdivisions thereof are not included in this definition.

(b) As used in this subchapter, "public record" or "public document" means all papers, staff reports, individual salaries, salary schedules or any other written or recorded matters produced or acquired in the course of agency business except:

(1) records which by law are designated confidential or by a similar term;

(2) records which by law may only be disclosed to specifically designated persons;

(3) records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the state;

(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege;

(5) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, records relating to management and direction of a law enforcement agency and

records reflecting the initial arrest of a person and the charge shall be public;

(6) a tax return and related documents, correspondence and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont department of taxes or submitted by a person to any public agency in connection with agency business;

(7) personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his designated representative;

(8) test questions, scoring keys, and other examination instruments or data used to administer a license, employment, or academic examination;

(9) trade secrets, including, but not limited to, any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it;

(10) lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain, provided; however, that this section does not apply to lists which are by law made available to the public;

(11) student records at educational institutions funded wholly or in part by state revenue; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93–380) and as amended;

(12) records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy, if disclosed;

(13) information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase

price of real or personal property for public purposes prior to the formal award of contracts thereof;

(14) records which are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation;

(15) records relating specifically to negotiation of contracts including but not limited to collective bargaining agreements with public employees;

(16) any voluntary information provided by an individual, corporation, organization, partnership, association, trustee, estate, or any other entity in the state of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document.—Added 1975, No. 231 (Adj. Sess.).

Revision note. The word "act" was changed to "subchapter" in subsection (b)(16) to conform to V.S.A. style.

§ 318. Procedure

(a) Upon request the custodian of a public record shall promptly produce the record for inspection, except that:

(1) if the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so certify this fact in writing to the applicant and set a date and hour within one calendar week of the request when the record will be available for examination;

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, he shall so certify in writing stating his reasons for denial of access to the record. Such certification shall be made within two business days, unless otherwise provided in division (5) of this subsection. The custodian shall also notify the person of his right to appeal to the head of the agency any adverse determination;

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five days, excepting Saturdays, Sundays, and legal public holidays, after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of this title;

(4) if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to him by the applicant or by any other name known to the custodian;

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this division, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

(A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the attorney general.

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted his administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.—Added 1975, No. 231 (Adj. Sess.).

§ 319. Enforcement

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the superior court in the county in which the complainant resides, or has his personal place of business, or in which the public records are situated, or in the superior court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a

case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden is on the agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(d) The court may assess against the public agency reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.—Added 1975, No. 231 (Adj. Sess.).

§ 320. Penalties

(a) Whenever the court orders the production of any public agency records, improperly withheld from the complainant and assesses against the agency reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether the agency personnel acted arbitrarily or capriciously with respect to the withholding, the department of personnel if applicable to that employee, shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The department, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the department recommends.

(b) In the event of noncompliance with the order of the court, the superior court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.—Added 1975, No. 231 (Adj. Sess.).

§ 1954. Conference powers—Article IV

The conference shall have power to:

(a) Establish and operate a New England criminal intelligence bureau, hereinafter called "the bureau", in which shall be received, assembled and kept case histories, records, data, personal dossiers and other information concerning persons engaged or otherwise associated with organized crime.

(b) Consider and recommend means of identifying leaders and emerging leaders of organized crime and their associates.

(c) Facilitate mutual assistance among the state police of the party states pursuant to article VII [section 1951 of this title] of this compact.

(d) Formulate procedures for claims and reimbursements, pursuant to article VII [section 1951 of this title] of this compact.

(e) Promote cooperation in law enforcement and make recommendations to the party states and other appropriate law enforcement authorities for the improvement of such cooperation.

(f) Do all things which may be necessary and incidental to the exercise of the foregoing powers.—1967, No. 288 (Adj. Sess.), § 1, eff. March 15, 1968.

§ 1955. Disposition of records and information—Article V

The bureau established and operated pursuant to article IV(a) [section 1954(a) of this title] of this compact is hereby designated and recognized as the instrument for the performance of a central criminal intelligence service to the state police departments of the party states. The files, records, data and other information of the bureau and, when made pursuant to the by-laws of the conference, any copies thereof shall be available only to duly designated officers and employees of the state police departments of the party states acting within the scope of their official duty. In the possession of the aforesaid officers and employees, such records, data, and other information shall be subject to use and disposition in the same manner and pursuant to the same laws, rules and regulations applicable to similar records, data and information of the officer's or employee's agency and the provisions of this compact [sections 1951–1959 of this title].—1967, No. 288 (Adj. Sess.), § 1, eff. March 15, 1968.

Chapter 117. Vermont Criminal Information Center

NEW SECTION

§ 2051. Creation of center

There shall be within the department of public safety a center to be known as the Vermont criminal information center. It shall be the official state repository for all criminal records, records of the commission of crimes, arrests, convictions, photographs, descriptions, fingerprints, and such other information as the commissioner deems pertinent to criminal activity.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2052. Director

The commissioner of public safety shall appoint a qualified person as director of the center.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2053. Cooperation with other agencies

(a) The center shall cooperate with other state departments and agencies, municipal police departments, sheriffs and other law enforcement officers in this state and with federal and international law enforcement agencies to develop and carry on a uniform and complete state, interstate, national and international system of records of criminal activities and information.

(b) All state departments and agencies, municipal police departments, sheriffs and other law enforcement officers shall cooperate with and assist the center in the establishment of a complete and uniform system of records relating to the commission of crimes, arrests, convictions, imprisonment, probation, parole, fingerprints, photographs, stolen property and other matters relating to the identification and records of persons who have or who are alleged to have committed a crime, who are missing persons or who are fugitives from justice.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2054. Uniform reports

(a) The center shall provide state departments and agencies, municipal police departments, sheriffs and other law enforcement officers with uniform forms for the reporting of the commission of crimes, arrests, convictions, imprisonment, probation, parole, fingerprints, missing persons, fugitives from justice, stolen property and such other matters as the commissioner deems relevant. The commissioner of public safety shall adopt regulations relating to the use, completion and filing of the uniform forms and to the operation of the center.

(b) A department, agency or law enforcement officer who fails to comply with the regulations adopted by the director with respect to the use, completion or filing of the uniform forms, after notice of failure to comply, shall be fined not more than $100.00. Each such failure shall constitute a separate offense.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2055. Files

The director of the center shall maintain such files as are necessary relating to the commission of crimes, arrests, convictions, disposition of criminal causes, probation, parole, fugitives from justice, missing persons, fingerprints, photographs, stolen property and such matters as the commissioner deems relevant.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2056. Certified records

Upon the request of a county or district court judge, the attorney general or a state's attorney, the center shall prepare the record of arrests, convictions or sentences of a person. The record, when duly certified by the commissioner of public safety or the director of the center, shall be competent evidence in the courts of this state. Such other information as is contained in the center may be made public only with the express approval of the commissioner of public safety.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2057. Information

From time to time but at least annually, the center shall publish information relating to criminal activity, arrests, convictions and such other information as the commissioner deems relevant.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

§ 2058. Repealed. 1971, No. 258 (Adj. Sess.), § 19, eff. July 1, 1972.

Former § 2058 was derived from 1969, No. 290 (Adj. Sess.), § 10.

§ 2059. Relationship to departments of corrections and motor vehicles

This chapter shall not apply to traffic offenses or any provisions of Title 23 or those sections of Title 32 which are administered by the commissioner of motor vehicles. Notwithstanding any other provisions of this chapter the department of corrections shall be only required to furnish statistical, identification and status data, and the provisions shall not extend to material related to case supervision or material of a confidential nature such as presentence investigation, medical reports or psychiatric reports.—Added 1973, No. 205 (Adj. Sess.), § 5, eff. July 1, 1974.

§ 204. —Submission of written report; protection of records

(a) A court, before which a person is being prosecuted for any crime, may in its discretion order the commissioner to submit a written report as to the circumstances of the alleged offense and the character and previous record of the person, with recommendation.

(b) The court shall order such a report to be made before imposing sentence when the respondent is adjudged guilty of a felony, except as otherwise provided by rules of the supreme court. If the report has been made to any court within the state within a period of two years with reference to such individual, in connection with the same or another offense, submission of a copy of that report may fulfill the requirements of this section, if the court to which the report is to be submitted approves. Upon request, the commissioner shall furnish a state's attorney with a copy of any report made within the state once sentence has been passed in connection with the offense for which the report was made.

(c) The report ordered by the court under this section shall be made not less than one week nor more than three weeks from the date of the order. This three week limit may be extended by order of the court.

(d) Any presentence report, pre-parole report, or supervision history prepared by any employee of the department in the discharge of his official duty, is privileged and shall not be disclosed to anyone outside the department other than the judge or the parole board, except that the court or board may in its discretion permit the inspection of the report or parts thereof by the state's attorney the defendant or inmate or his attorney, or other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful.—Added 1971, No. 199 (Adj. Sess.), § 20, eff. July 1, 1972; amended 1973, No. 109, § 10, eff. 30 days from April 25, 1973.

1973 amendment. Subsection (b): Amended generally.

§ 601. Powers and responsibilities of the supervising officer of each correctional facility

(10) To establish and maintain, in accordance with such rules and regulations as are established by the commissioner, a central file at the facility containing an individual file for each inmate. Except as otherwise may be indicated by the rules and regulations of the department, the content of the file of an inmate shall be confidential and shall not be subject to public inspection except by court order for good cause shown and shall not be accessible to inmates at the facility.—Added 1971, No. 199 (Adj. Sess.), § 20, eff. July 1, 1972.

CHAPTER 21.

VIRGINIA FREEDOM OF INFORMATION ACT.

§ 2.1-340.1. Policy of chapter. — It is the purpose of the General Assembly by providing this chapter to ensure to the people of this Commonwealth ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the people is being conducted. This chapter recognizes that the affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. To the end that the purposes of this chapter may be realized, it shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exception or exemption from applicability shall be narrowly construed in order that no thing which should be public may be hidden from any person. (1976, c. 467.)

Law Review. — For a discussion of the amendments to this Act in the survey of Virginia administrative law for the year 1975-1976, see 62 Va. L. Rev. 1359 (1976).

§ 2.1-341. Definitions. — The following terms, whenever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning clearly appears from the context:

(a) *"Meeting"* or *"meetings"* means the meetings, when sitting as a body or entity, or as an informal assemblage of the constituent membership, with or without minutes being taken, whether or not votes are cast, of any legislative body, authority, board, bureau, commission, district or agency of the State or of any political subdivision of the State, including cities, towns and counties; municipal councils, governing bodies of counties, school boards and planning commissions; and other organizations, corporations or agencies in the State, supported wholly or principally by public funds. The notice provisions of this chapter shall not apply to the said informal meetings or gatherings of the members of the General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering or attendance of two or more members of a body or entity at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the body or entity.

(b) *"Official records"* means all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, made and received in pursuance of law by the public officers of the State and its counties, municipalities and subdivisions of government in the transaction of public business.

(c) *"Executive meeting"* or *"closed meeting"* means a meeting from which the public is excluded.

(d) *"Open meeting"* or *"public meeting"* means a meeting at which the public may be present.

(e) *"Public body"* shall mean any of the groups, agencies or organizations enumerated in subsection (a) of this section.

(f) *"Scholastic records"* means those records, files, documents, and other materials containing information about a student and maintained by a public body which is an educational agency or institution or by a person acting for such agency or institution, but, for the purpose of access by a student, does not include (i) financial records of a parent or guardian nor (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute. (1968, c. 479; 1970, c. 456; 1974, c. 332; 1975, c. 307; 1977, c. 677.)

§ 2.1-341.1. Notice of chapter. — Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall be furnished by the public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment. (1976, c. 467.)

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter. — (a) Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this State during the regular office hours of the custodian of such records. Access to such records shall not be denied to any such citizen of this State, nor to representatives of newspapers and magazines with circulation in this State, and representatives of radio and television stations broadcasting in or into this State; provided, that the custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within fourteen calendar days from the receipt of the request by the public body. Such citizen request shall designate the requested records with reasonable specificity. If the requested records or public body are excluded from the provisions of this chapter, the public body to which the request is directed shall within fourteen calendar days from the receipt of the request tender a written explanation as to why the records are not available to the requestor. Such explanation shall make specific reference to the applicable provisions of this chapter or other Code sections which make the requested records unavailable. In the event a determination of the availability of the requested records may not be made within the fourteen-calendar-day period, the public body to which the request is directed shall inform the requestor as such, and shall have an additional ten calendar days in which to make a determination of availability. A specific reference to this chapter by the requesting citizen in his records request shall not be necessary to invoke the time limits for response by the public body. The public body may make reasonable charges for the copying and search time expended in the supplying of such records; however, in no event shall such charges exceed the actual cost of the public body in supplying such records. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

(b) The following records are excluded from the provisions of this chapter:

(1) Memoranda, correspondence, evidence and complaints related to criminal investigations, reports submitted to the State and local police in confidence, and all records of persons imprisoned in a penal institution in this State provided such records relate to the said imprisonment.

(2) Confidential records of all investigations of applications for licenses and all licensees made by or submitted to the Alcoholic Beverage Control Board.

(3) State income tax returns, scholastic records and personnel records, except that such access shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; provided, however, that the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his parent or guardian, except in instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education.

(4) Memoranda, working papers and correspondence held or requested by members of the General Assembly or by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the State or the president or other chief executive officer of any state-supported institutions of higher education.

(5) Memoranda, working papers and records compiled specifically for use in litigation and material furnished in confidence with respect thereto.

(6) Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition. (1968, c. 479; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677.)

§ 2.1-343. Meetings to be public except as otherwise provided; minutes; information as to time and place. — Except as otherwise specifically provided by law and except as provided in §§ 2.1-344 and 2.1-345, all meetings shall be public meetings. Minutes shall be recorded at all public meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly, (ii) legislative interim study commissions and committees, including the Virginia Code Commission, (iii) the Virginia Advisory Legislative Council and its committees, (iv) study committees or commissions appointed by the Governor, or (v) study commissions or study committees appointed by the governing bodies of counties, cities and towns, except where the membership of any such study commission or study committee includes more than one member of a three member governing body or includes more than two members of a governing body having four or more members. Information as to the time and place of each meeting shall be furnished to any citizen of this State who requests such information. Requests to be notified on a continual basis shall be made at least once a year in writing and include name, address, zip code and organization if any, together with an adequate supply of stamped self-addressed envelopes. (1968, c. 479; 1973, c. 461; 1976, c. 467; 1977, c. 677.)

§ 2.1-344. Executive or closed meetings. — (a) Executive or closed meetings may be held only for the following purposes:

(1) Discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, disciplining or resignation of public officers, appointees or employees of any public body.

(2) Discussion or consideration of the condition, acquisition or use of real property for public purpose, or of the disposition of publicly held property.

(3) The protection of the privacy of individuals in personal matters not related to public business.

(4) Discussion concerning a prospective business or industry where no previous announcement has been made of the business' or industry's interest in locating in the community.

(5) The investing of public funds where competition or bargaining are involved, where if made public initially the financial interest of the governmental unit would be adversely affected.

(6) Consultation with legal counsel and briefings by staff members, consultants or attorneys, pertaining to actual or potential litigation, or other legal matters within the jurisdiction of the public body.

(b) No meeting shall become an executive or closed meeting unless there shall have been recorded in open meeting an affirmative vote to that effect by the public body holding such meeting, which motion shall state specifically the purpose or purposes hereinabove set forth in this section which are to be the subject of such meeting and a statement included in the minutes of such meeting which shall make specific reference to the applicable exemption or exemptions as provided in subsection (a) or § 2.1-345. A general reference to the provisions of this chapter or to the exemptions of subsection (a) shall not be sufficient to satisfy the requirements for an executive or closed meeting. The public body holding such an executive or closed meeting shall restrict its consideration of matters during the closed portions to only those purposes specifically exempted from the provisions of this chapter.

(c) No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an executive or closed meeting shall become effective unless such public body, following such meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or motion.

(d) Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same regulations for holding executive or closed sessions as are applicable to any other public body. (1968, c. 479; 1970, c. 456; 1973, c. 461; 1974, c. 332; 1976, cc. 467, 709.)

§ 2.1-345. **Agencies to which chapter inapplicable.** — The provisions of this chapter shall not be applicable to:
(1) to (4) [Repealed.]
(5) Boards of visitors or trustees of state-supported institutions of higher education; provided, that, except for the actions excluded by § 2.1-344, announcements of the actions of such boards are made available immediately following the meetings, with membership of such boards then available for discussion of actions taken, and that the official minutes of the board meetings are made available to the public not more than three working days after such meetings.
(6) Parole boards; petit juries; grand juries; and the Virginia State Crime Commission.
(7) [Repealed.] (1968, c. 479; 1971, Ex. Sess., c. 1; 1973, c. 461; 1974, c. 332; 1977, c. 677.)

§ 2.1-346. **Proceedings for enforcement of chapter.** — Any person denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by petition for mandamus or injunction, supported by an affidavit showing good cause, addressed to the court of record, having jurisdiction of such matters, of the county or city in which such rights and privileges were so denied. Any such petition alleging such denial by a board, bureau, commission, authority, district or agency of the State government or by a standing or other committee of the General Assembly, shall be addressed to the Circuit Court of the city of Richmond. Such petition shall be heard within seven days of the date when the same is made; provided, if such petition is made outside of the regular terms of the circuit court of a county which is included in a judicial circuit with another county or counties, the hearing on such petition shall be given precedence on the docket of such court over all cases which are not otherwise given precedence by law. Such petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of such rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the court may award costs and reasonable attorney's fees to the petitioning citizen. Such costs and fees shall be paid by the public body in violation of this chapter. The court may award costs and reasonable attorney's fees to the public body if the court finds that the petition was based upon a clearly inadequate case. (1968, c. 479; 1976, c. 709.)

§ 2.1-346.1. **Violations and penalties.** — In a proceeding commenced against members of governing bodies under § 2.1-346 for a violation of §§ 2.1-342, 2.1-343 or 2.1-344, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such person or persons in his or her individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than twenty-five dollars nor more than five hundred dollars, which amount shall be paid into the State Literary Fund. (1976, c. 467.)

CHAPTER 26.

PRIVACY PROTECTION ACT OF 1976.

§ 2.1-377. **Short title.** — This chapter may be cited as the "Privacy Protection Act of 1976." (1976, c. 597.)

§ 2.1-378. **Findings; purpose of chapter.** — A. The General Assembly finds:

1. That an individual's privacy is directly affected by the extensive collection, maintenance, use and dissemination of personal information;

2. That the increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from these practices;

3. That an individual's opportunities to secure employment, insurance, credit and his right to due process, and other legal protections are endangered by the misuse of certain of these personal information systems; and

4. That in order to preserve the rights guaranteed a citizen in a free society, legislation is necessary to establish procedures to govern information systems containing records on individuals.

B. The purpose of this chapter is to ensure safeguards for personal privacy by record keeping agencies of the Commonwealth and her political subdivisions by adherence to the following principles of information practice:

1. There should be no personal information system whose existence is secret.

2. Information should not be collected unless the need for it has been clearly established in advance.

3. Information should be appropriate and relevant to the purpose for which it has been collected.

4. Information should not be obtained by fraudulent or unfair means.

5. Information should not be used unless it is accurate and current.

6. There should be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.

7. There should be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.

8. Any agency holding personal information should assure its reliability and take precautions to prevent its misuse.

9. There should be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.

10. The Commonwealth or any agency or political subdivision thereof should not collect personal information except as explicitly or implicitly authorized by law. (1976, c. 597.)

§ 2.1-379. **Definitions.** — As used in this chapter:

1. The term *"information system"* means the total components and operations of a record-keeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.

2. The term *"personal information"* means all information that describes, locates or indexes anything about an individual including his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution. The term does not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information.

3. The term *"data subject"* means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system.

4. The term *"disseminate"* means to release, transfer, or otherwise communicate information orally, in writing, or by electronic means.

5. The term *"purge"* means to obliterate information completely from the transient, permanent, or archival records of an organization.

6. The term *"agency"* means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns and regional governments and the departments and including any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function. Any such entity included in this definition by reason of a contractual relationship shall only be deemed an agency as relates to services performed pursuant to that contractual relationship, provided that if any such entity is a consumer reporting agency, it shall be deemed to have satisfied all of the requirements of this chapter if it fully complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services performed pursuant to such contractual relationship. (1976, c. 597.)

§ 2.1-380. **Administration of systems including personal information.** — Any agency maintaining an information system that includes personal information shall:

1. Collect, maintain, use, and disseminate only that personal information permitted or required by law to be so collected, maintained, used, or disseminated, or necessary to accomplish a proper purpose of the agency;

2. Collect information to the greatest extent feasible from the data subject directly;

3. Establish categories for maintaining personal information to operate in conjunction with confidentiality requirements and access controls;

4. Maintain information in the system with accuracy, completeness, timeliness, and pertinence as necessary to assure fairness in determinations relating to a data subject;

5. Make no dissemination to another system without (i) specifying requirements for security and usage including limitations on access thereto, and (ii) receiving reasonable assurances that those requirements and limitations will be observed, provided this paragraph shall not apply to a dissemination made by an agency to an agency in another state, district or territory of the United States where the personal information is requested by the agency of such other state, district or territory in connection with the application of the data subject therein for a service, privilege or right under the laws thereof;

6. Maintain a list of all persons or organizations having regular access to personal information in the information system;

7. Maintain for a period of three years or until such time as the personal information is purged, whichever is shorter, a complete and accurate record, including identity and purpose, of every access to any personal information in a system, including the identity of any persons or organizations not having regular access authority but excluding access by the personnel of the agency wherein data is put to service for the purpose for which it is obtained;

8. Take affirmative action to establish rules of conduct and inform each person involved in the design, development, operation, or maintenance of the system, or the collection or use of any personal information contained therein, about all the requirements of this chapter, the rules and procedures, including penalties for noncompliance, of the agency designed to assure compliance with such requirements;

9. Establish appropriate safeguards to secure the system from any reasonably foreseeable threat to its security;

10. Collect no personal information concerning the political or religious beliefs, affiliations, and activities of data subjects which is maintained, used or disseminated in or by any information system operated by any agency unless authorized explicitly by statute or ordinance. (1976, c. 597.)

§ 2.1-381. **Same; dissemination of reports.** — Any agency maintaining an information system that disseminates statistical reports or research findings based on personal information drawn from its system, or from other systems shall:

1. Make available to any data subject or group, without revealing trade secrets, methodology and materials necessary to validate statistical analysis, and

2. Make no materials available for independent analysis without guarantees that no personal information will be used in any way that might prejudice judgments about any data subject. (1976, c. 597.)

§ 2.1-382. **Rights of data subjects.** — A. Any agency maintaining personal information shall:

1. Inform an individual who is asked to supply personal information about himself whether he is legally required, or may refuse, to supply the information requested, and also of any specific consequences which are known to the agency of providing or not providing such information.

2. Give notice to a data subject of the possible dissemination of part or all of this information to another agency, nongovernmental organization or system not having regular access authority, and indicate the use for which it is intended, and the specific consequences for the individual, which are known to the agency, of providing or not providing such information, however documented permission for dissemination in the hands of such other agency or organization will satisfy this requirement.

3. Upon request and proper identification of any data subject, or of his authorized agent, grant such subject or agent the right to inspect, in a form comprehensible to such individual or agent:

(a) All personal information about that data subject except in the case of medical and psychological records, when such records shall, upon written authorization, be given to a physician or psychologist designated by the data subject.

(b) The nature of the sources of the information.

(c) The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority.

4. Comply with the following minimum conditions of disclosure to data subjects:

(a) An agency shall make disclosures to data subjects required under this chapter, during normal business hours.

(b) The disclosures to data subjects required under this chapter shall be made (i) in person, if he appears in person and furnishes proper identification, (ii) by mail, if he has made a written request, with proper identification. Copies of the documents containing the personal information sought by a data subject shall be furnished to him or his representative at reasonable standard charges for document search and duplication.

(c) The data subject shall be permitted to be accompanied by a person or persons of his choosing, who shall furnish reasonable identification. An agency may require the data subject to furnish a written statement granting permission to the organization to discuss the individual's file in such person's presence.

5. If the data subject gives notice that he wishes to challenge, correct, or explain information about him in the information system, the following minimum procedures shall be followed:

(a) The agency maintaining the information system shall investigate, and record the current status of that personal information.

(b) If, after such investigation, such information is found to be incomplete, inaccurate, not pertinent, not timely nor necessary to be retained, it shall be promptly corrected or purged.

(c) If the investigation does not resolve the dispute, the data subject may file a statement of not more than two hundred words setting forth his position.

(d) Whenever a statement of dispute is filed, the organization maintaining the information system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly note that it is disputed and supply the statement of the data subject along with the information.

(e) The agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request.

(f) Following any correction or purging of personal information the agency shall furnish to past recipients notification that the item has been purged or corrected whose receipt shall be acknowledged.

B. Nothing in this section or found elsewhere in this chapter shall be construed so as to require an agency to disseminate any recommendation or letter of reference from or to a third party which is a part of the personnel file of any data subject. (1976, c. 597.)

§ 2.1-383. Agencies to report concerning systems operated or developed; publication of information. — Every agency shall make report to the Department of Management Analysis and Systems Development of the existence of any information system which it operates or develops which will include a description of the nature of the data in the system and purpose for which it is used. The Department shall compile and arrange the information so received and annually provide the same to the Secretary of the Commonwealth. Such information shall be made available for inspection by the general public in the office of the Secretary of the Commonwealth. Copies of such information shall be provided upon request and a fee shall be charged for the same sufficient to cover the reasonable costs of reproduction. (1976, c. 597; 1977, c. 279.)

§ 2.1-384. **Systems to which chapter inapplicable.** — The provisions of this chapter shall not be applicable to personal information systems:

1. Maintained by any court of this Commonwealth;

2. Which may exist in publications of general circulation;

3. Maintained by the Department of State Police, the police departments of cities, towns, and counties, sheriff's departments, offices of Commonwealth's attorneys, the Department of Corrections or any of its divisions, the Parole Board, the Department of Law, the Crime Commission, the Criminal Justice Officers Training and Standards Commission, the Judicial Inquiry and Review Commission, the Department of Alcoholic Beverage Control, or any federal, State, or local governmental agency or subunit thereof, which agency or subunit has as its function the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders;

4. Relating to the parentage of any person; and

5. Maintained by agencies concerning persons required to be licensed by law in this State to engage in the practice of any professional occupation, in which case the names and addresses of persons applying for or possessing any such license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing such licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided such disseminating agency is reasonably assured that the use of such information will be so limited. (1976, c. 597.)

§ 2.1-385. **Disclosure of social security number.** — On or after July one, nineteen hundred seventy-seven, it shall be unlawful for any agency to require an individual to disclose or furnish his social security account number not previously disclosed or furnished, for any purpose in connection with any activity, or to refuse any service, privilege or right to an individual wholly or partly because such individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by federal or State law. (1976, c. 597.)

§ 2.1-386. **Injunctive relief.** — Any aggrieved person may institute a proceeding for injunction or mandamus against any person or agency which has engaged, is engaged, or is about to engage in any acts or practices in violation of the provisions of this chapter. The proceeding shall be brought in the circuit court of any county or city wherein the person or agency made defendant resides or has a place of business. In the case of any successful proceeding by an aggrieved party, the person or agency enjoined or made subject to a writ of mandamus by the court shall be liable for the costs of the action together with reasonable attorney's fees as determined by the court. (1976, c. 597.)

In General.

Sec.

Criminal Justice Information System.

Sec.

§ 9-107.1. Commission established; appointment; terms; vacancies; members not disqualified from holding other offices; designation of chairman; expenses; meetings; reports. — A. On and after November one, nineteen hundred seventy-six, the Criminal Justice Officers Training and Standards Commission is abolished and there is hereby created a Criminal Justice Services Commission, hereinafter called "the Commission" in the Executive Department. The Commission shall be composed of sixteen members, as follows: one member from the Senate of Virginia appointed by the Committee on Privileges and Elections of the Senate for a term of four years; two members from the House of Delegates appointed by the Speaker of the House for terms of two years each; the Superintendent of the Department of State Police or his designee; the Director of the Department of Corrections or his designee; the Executive Secretary of the Supreme Court of Virginia or his designee; the following appointments by the Governor: two sheriffs representing the Virginia State Sheriff's Association from among names submitted by the Association; two representatives of the Chiefs of Police Association from among names submitted by the Association; two Commonwealth's attorneys from among names submitted by the Association for Commonwealth's Attorneys; two persons from among mayors, city and town managers, and members of municipal councils representing the Virginia Municipal League from among names submitted by the League; and two persons from among county executives, managers, and members of county boards of supervisors representing the Virginia Association of Counties from among names submitted by the Association.

B. The members of the Commission appointed by the Governor shall serve for terms of four years; provided that no member shall serve beyond the time when he holds the office or employment by reason of which he was initially eligible for appointment. Notwithstanding anything in this chapter to the contrary, the terms of members initially appointed to the Commission by the Governor upon its establishment shall be: five for three years and five for four years. The Governor, at the time of appointment, shall designate which of the terms are respectively for three and four years. Any vacancy on the Commission shall be filled in the same manner as the original appointment, but for the unexpired term.

C. The Commission annually shall elect its chairman and vice-chairman from among the members of the Commission.

D. Notwithstanding any provision of any statute, ordinance, local law, or charter provision to the contrary, membership on the Commission shall not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

E. Members of the Commission shall serve without compensation, but shall be entitled to receive reimbursement for any actual expenses incurred as a necessary incident to such service.

F. The Commission shall hold no less than four regular meetings a year. Subject to the requirements of this subsection, the chairman shall fix the times and places of meetings, either on his own motion or upon written request of any five members of the Commission.

G. The Commission shall report annually to the Governor and General Assembly on its activities, and may make such other reports as it deems advisable. (1976, c. 771.)

§ 9-108.1. Definitions. — The following words, whenever used in this chapter, or in chapter 23 (§ 19.2-387 et seq.) of Title 19.2, shall have the following meanings, unless the context otherwise requires:

A. *"Administration of criminal justice"* means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

B. *"Criminal justice agency"* means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities but only to the extent that it does so.

C. *"Criminal history record information"* means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by chapter 8 (§ 16.1-139 et seq.), of Title 16.1, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

D. *"Correctional status information"* means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

E. *"Criminal justice information system"* means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

F. *"Commission"* means the Criminal Justice Services Commission.

G. *"Dissemination"* means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

H. *"Law-enforcement officer"* means any full-time employee of a police department or sheriff's office which is a part of or administered by the State or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highways laws of this State, and shall include any member of the Enforcement or Inspection Division of the Alcoholic Beverage Control Commission vested with police authority.

I. *"Conviction data"* means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court. (1976, c. 771; 1977, cc. 357, 626.)

§ 9-109. Powers. — In addition to powers conferred upon the Commission elsewhere in this chapter, the Commission shall have power to:

(1) Promulgate rules and regulations, pursuant to chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia, for the administration of this chapter including the authority to require the submission of reports and information by police officers within this State. Any proposed rules and regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof.

(2) Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer, (a) in permanent positions, and (b) in temporary or probationary status, and establish the time required for completion of such training.

(3) Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools operated by or for the State or any political subdivisions thereof for the specific purpose of training law-enforcement officers.

(4) Consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of police training schools and programs or courses of instruction.

(5) Approve institutions and facilities for school operation by or for the State or any political subdivision thereof for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not.

(6) Make or encourage studies of any aspect of law-enforcement administration.

(7) Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement.

(8) Make recommendations concerning any matter within its purview pursuant to this chapter.

(9) [Repealed.]

(10) Adopt and amend rules and regulations, consistent with law, for its internal management and control.

(11) Enter into contracts or do such things as may be necessary and incidental to the administration of its authority pursuant to this chapter.

(12) Coordinate its activities with those of any interstate system for the exchange of criminal history record information, to nominate one or more of its members to serve upon the council or committee of any such system, and to participate when and as deemed appropriate in any such system's activities and programs.

(13) Conduct such inquiries and investigations as it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations, the Commission shall have the authority to require any criminal justice agency to submit to the Commission information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit to the Commission such information, reports, and data as are reasonably required.

(14) Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information.

(15) Conduct audits as required by § 9-111.5.

(16) Advise criminal justice agencies and to initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information.

(17) Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof.

(18) Issue regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information and the privacy, confidentiality, and security thereof necessary to implement State and federal statutes, federal regulations, and court orders.

(19) The Department of State Police shall be the control terminal agency for the Commonwealth and perform all functions required of a control terminal agency by the rules and regulations of the National Crime Information Center. Notwithstanding anything to the contrary in this article, the Central Criminal Records Exchange and the Department of State Police shall remain the central repository for criminal history record information in the Commonwealth and the Department shall continue to be responsible for the management and operation of such exchange. (1968, c. 740; 1976, c. 771.)

§ 9-109.2. Establishment of minimum training standards for jailers and custodial officers. — The Commission shall have power to establish compulsory minimum training standards for those persons employed as jailers or custodial officers under the provisions of Title 53, and to establish the time required for completion of such training. (1973, c. 235.)

§ 9-109.4. Appointment of Executive Director; staff of Commission; duties of Executive Director. — A. The Governor shall appoint the Executive Director of the Commission, subject to confirmation by the General Assembly, and he shall hold his office at the pleasure of the Governor.

B. The Executive Director shall employ and fix the salaries of such personnel as may be necessary in the performance of the Commission's functions. The salaries of such personnel shall be fixed in accordance with the standards of classification of chapter 10 (§ 2.1-110 et seq.) of Title 2.1.

C. The Executive Director shall exercise such powers and perform such duties as are conferred by law upon him, and he shall perform such other duties as may be required of him by the Governor and the Commission. (1976, c. 771.)

§ 9-109.5. Powers of Executive Director. — The Executive Director of the Commission shall have the following powers:

A. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Commission shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.

B. To do all acts necessary or convenient to carry out the purpose of this chapter and to assist the Commission in carrying out its responsibilities under § 9-109. (1976, c. 771.)

§ 9-111. Acceptance of donations and grants; law-enforcement officers serving on July 1, 1971. — The Commission may accept for any of its purposes and functions under this chapter any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Commission. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received by the Commission pursuant to this section shall be deposited in the State treasury to the account of the Commission.

The provisions of this chapter shall not be construed to require law-enforcement officers serving under permanent appointment on July one, nineteen hundred seventy-one, to meet the compulsory minimum training standards provided for in § 9-109 (2), nor shall failure of any such officer to meet such standards make him ineligible for any promotional examination for which he is otherwise eligible, except that any law-enforcement officer designated under the provisions of § 53-168.1 to provide courthouse and courtroom security shall be required to meet the standards provided under § 9-109.1. Any full-time deputy sheriff who is a law-enforcement officer and who is exempted from the compulsory minimum training standards under this section shall be eligible for the minimum salary established by § 14.1-73.2 of the Code of Virginia. (1968, c. 740; 1971, Ex. Sess., c. 108; 1972, c. 135; 1975, c. 222; 1976, c. 706.)

§ 9-111.1. Compliance with minimum training standards by officers employed after July 1, 1971. — Every law-enforcement officer employed after July one, nineteen hundred seventy-one, shall, within a period of time fixed by the Commission through rules and regulations promulgated by the Commission pursuant to chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia, comply with the compulsory minimum training standards established by the Commission. Any person employed as a law-enforcement officer after July one, nineteen hundred seventy-one, who is not in compliance with the compulsory minimum training standards as established by the Commission, shall be suspended from such employment without pay until such time as he is in compliance therewith. The Commission shall have the power to require law-enforcement agencies of the Commonwealth and its political subdivisions to submit rosters of their personnel and pertinent data with regard to the training status of such personnel. (1974, c. 376.)

§ 9-111.2. Compulsory minimum training standards for private security services business personnel. — A. The Commission shall have power to issue regulations, pursuant to chapter 1.1:1 (§ 9-6.14:1 et seq.), of Title 9, of the Code of Virginia, establishing compulsory minimum training standards for persons employed by private security services businesses as armored car personnel, or as couriers, guards, guard dog handlers, private investigators or private detectives as the foregoing classifications are defined in § 54-729.27 and may include provisions in such regulations delegating to its staff the right to inspect the facilities and programs of persons conducting training to ensure compliance with the law and its regulations. In establishing by regulation compulsory minimum training standards for each of the foregoing classifications, the Commission shall be guided by the policy of this section which is to secure the public safety and welfare against incompetent or unqualified persons engaging in the activities regulated by this section and chapter 17.3 (§ 54-729.27 et seq.), of Title 54, of the Code of Virginia.

B. In promulgating its regulations establishing compulsory minimum training standards for persons employed by private security services businesses, the Commission shall seek the advice of the Private Security Services Advisory Committee established pursuant to § 54-729.30. (1976, c. 737; 1977, c. 376.)

Criminal Justice Information System.

§ 9-111.3. Application and construction of article. — A. This article applies to original or copied criminal history record information, maintained by a criminal justice agency (i) of the Commonwealth of Virginia or its political subdivisions, and (ii) of the United States or of another state or its political subdivisions which exchange such information with an agency covered in (i) but only to the extent of that exchange.

B. The provisions of this article do not apply to original or copied (i) records of entry, such as police blotters, maintained by a criminal justice agency on a chronological basis and permitted to be made public, if such records are not indexed or accessible by name, (ii) court records of public criminal proceedings, including opinions and published compilations thereof, (iii) records of traffic offenses disseminated to or maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses, (iv) statistical or analytical records or

reports in which individuals are not identified and from which their identities are not ascertainable, (v) announcements of executive clemency, (vi) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons, (vii) criminal justice intelligence information, or (viii) criminal justice investigative information.

C. Nothing contained in this article shall be construed as prohibiting a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is related to the offense for which the individual is currently within the criminal justice system. (1976, c. 771; 1977, c. 626.)

§ 9-111.4. Establishment of statewide criminal justice information system; duties of Commission generally; assistance of other agencies. — The Commission shall provide for the coordination of the operation of a statewide comprehensive criminal justice information system for the exchange of criminal history record information among the criminal justice agencies of the State and its political subdivisions. The Commission shall develop standards and goals for such system, define the requirements of such system, define system objectives, recommend development priorities and plans, review development efforts, coordinate the needs and interests of the criminal justice community, outline agency responsibilities, appoint ad hoc advisory committees, and provide for the participation of the statewide comprehensive criminal justice information system in interstate criminal justice information systems. The Commission may request technical assistance of any State agency, commission, or other body and such State entities shall render such assistance as is reasonably required. (1976, c. 771.)

§ 9-111.5. Annual audits. — A. The Commission shall insure that annual audits are conducted of a representative sample of State and local criminal justice agencies to insure compliance with this article and the regulations of the Commission. The Commission shall issue such regulations as may be necessary for the conduct of audits, the retention of records to facilitate such audits, the determination of necessary corrective actions, and the reporting of corrective actions taken.

B. The results of such audits together with a summary of any necessary corrective actions shall be included in the Commission's annual report to the Governor and General Assembly. (1976, c. 771.)

§ 9-111.6. Information to be disseminated only in accordance with § 19.2-389. — Criminal history record information shall be disseminated, whether directly or through an intermediary, only in accordance with § 19.2-389. (1976, c. 771.)

§ 9-111.7. Regulations and procedures. — A. The Commission shall issue regulations and procedures for the interstate dissemination of criminal history record information by which criminal justice agencies of the Commonwealth shall insure that the limitations on dissemination of criminal history record information set forth in § 19.2-389 are accepted by recipients and will remain operative in the event of further dissemination.

B. The Commission shall issue regulations and procedures for the validation of an interstate recipient's right to obtain criminal history record information from criminal justice agencies of the Commonwealth. (1976, c. 771.)

§ 9-111.8. Participation of State and local agencies in interstate system; access to such system limited. — A. The Commission shall regulate participation of State and local agencies in any interstate system for the exchange of criminal history record information and shall be responsible for assuring the consistency of such participation with the terms and purposes of this article. The Commission shall have no authority to compel any agency to participate in any such interstate system.

B. Direct access to any such system shall be limited to such criminal justice agencies as are expressly designated for that purpose by the Commission. (1976, c. 771.)

§ 9-111.9. Sealing or purging of criminal history record information. — A. The Commission shall adopt procedures reasonably designed (i) to insure prompt sealing or purging of criminal history record information when required by State or federal statute, federal regulation or court order, and (ii) to permit opening of sealed information under conditions authorized by law.

B. The Commission may, in its discretion, order that criminal history record information be purged if, in the opinion of the Commission, the maintenance of such information would result in manifest injustice. (1976, c. 771.)

§ 9-111.10. Procedures to be adopted by agencies maintaining criminal justice information systems. — Each criminal justice agency maintaining and operating a criminal justice information system shall adopt procedures reasonably designed to insure:

A. The physical security of the system and the prevention of unauthorized disclosure of the information contained in the system;

B. The timeliness and accuracy of information in the system, collected after November one, nineteen hundred seventy-six;

C. That all criminal justice agencies to which criminal offender record information is disseminated or from which it is collected are currently and accurately informed of any correction, deletion, or revision of such information;

D. Prompt purging or sealing of criminal offender record information when required by State or federal statute, State or federal regulations, or court order;

E. Use or dissemination of criminal offender record information by criminal justice agency personnel only after it has been determined to be the most accurate and complete information available to the criminal justice agency. (1976, c. 771; 1977, c. 626.)

§ 9-111.11. Individual's right of access to and review and correction of information. — A. Any individual who believes that criminal history record information is being maintained about him by Central Criminal Records Exchange, or by the arresting law-enforcement agency in the case of offenses not required to be reported to such Exchange, shall have the right to inspect a copy of such criminal history record information at the Exchange or the arresting law-enforcement agency, respectively, for the purpose of ascertaining the completeness and accuracy of such information. The individual's right to access and review shall not extend to any information or data other than that defined in § 9-108.1 C.

B. The Commission shall issue regulations with respect to an individual's right to access and review criminal history record information about himself reported to Central Criminal Records Exchange or, if not reported to such Exchange, maintained by the arresting law-enforcement agency. Such regulations shall provide for public notice of such right, access to criminal history record information by an attorney-at-law acting for an individual, identification, places and time for review, review of Virginia records by individuals located in other states, assistance in understanding the record, obtaining a copy for purposes of initiating a challenge to the record, procedures for investigation of alleged incompleteness or inaccuracy, completion or correction of records if indicated, and notification of the individuals and agencies to whom an inaccurate or incomplete record has been disseminated.

C. If an individual believes information maintained about him to be inaccurate or incomplete, he may request the agency having custody or control of the records to purge, modify, or supplement them. Should the agency decline to so act, or should the individual believe the agency's decision to be otherwise unsatisfactory, the individual may, in writing, request review by the Commission. The Commission, its representative, or agent shall, in each case in which it finds prima facie basis for a complaint, conduct a hearing at which the individual may appear with counsel, present evidence, and examine and cross-examine witnesses. Written findings and conclusions shall be issued. Should the record in question be found to be inaccurate or incomplete, the criminal justice agency or agencies maintaining such information shall purge, modify, or supplement it in accordance with the findings and conclusions of the Commission. Notification of purging, modification, or supplementation of criminal history record information shall be promptly made by the criminal justice agency maintaining such previously inaccurate information to any individuals or agencies to which the information in question was communicated, as well as to the individual whose records have been ordered so altered.

D. Criminal justice agencies shall maintain records of all persons or agencies to whom criminal history record information was disseminated and the date upon which such information was disseminated and such other record matter for the number of years required by rules and regulations of the Commission.

E. Any individual or agency aggrieved by any order or decision of the Commission may appeal such order or decision to the circuit court of the jurisdiction in which the Commission has its administrative headquarters. (1976, c. 771.)

§ 9-111.12. Civil remedies for violation of this chapter or chapter 23 of Title 19.2. — A. Any person may institute a civil action in the circuit court of the jurisdiction in which the Commission has its administrative headquarters, or in the jurisdiction in which any violation is alleged to have occurred, for actual damages resulting from violation of this article or to restrain any violation thereof, or both.

B. Any person may bring an action in the circuit court of the jurisdiction in which the Commission has its administrative headquarters, or in the jurisdiction in which any violation is alleged to have occurred, against any person who has engaged, is engaged, or is about to engage in any acts or practices in violation of chapter 23 (§ 19.2-387 et seq.) of Title 19.2, chapter 16 (§ 9-107 et seq.) of Title 9, or rules or regulations of the Commission to obtain appropriate, equitable relief.

C. This section shall not be construed as constituting a waiver of the defense of sovereign immunity. (1976, c. 771; 1977, c. 626.)

The 1977 amendment inserted "or in the jurisdiction in which any violation is alleged to have occurred" in subsections A and B.

Law Review. — For survey of Virginia criminal procedure for the year 1975-1976, see 62 Va. L. Rev. 1412 (1976).

§ 9-111.13. Criminal penalty for violation. — Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information to any agency or person in violation of this article or chapter 23 (§ 19.2-387 et seq.) of Title 19.2, shall be guilty of a Class 2 misdemeanor. (1976, c. 771.)

Cross reference. — As to punishment for Class 2 misdemeanors, see § 18.2-11.

§ 9-111.14. Article to control over other laws; exception; application of chapter 1.1:1 of this title. — A. In the event any provision of this article shall conflict with other provisions of law, the provisions of this article shall control, except as provided in paragraph B hereof.

B. Notwithstanding the provisions of paragraph A hereof, this article shall not alter, amend, or supersede any provisions of the Code of Virginia relating to the collection, storage, dissemination, or use of records of juveniles.

C. Insofar as it is consistent with this article, chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia shall control. (1976, c. 771.)

§ 16.1-130. Criminal dockets. — For each court not of record having jurisdiction of criminal matters there shall be a criminal docket, on which shall be entered all cases tried and prosecuted and all matters coming before the court, and the final disposition of the same, together with an account of costs and fines assessed. Such dockets shall be maintained as public records for a period of twenty years, after which they may be destroyed. (1956, c. 555; 1962, c. 108.)

§ 16.1-193. When papers may be destroyed. — Notwithstanding the provisions of § 16.1-192, the clerk of any juvenile and domestic relations court may destroy the files, papers and records connected with any proceeding in such court, if:

(1) Such proceeding was with respect to a child, and such child has attained the age of twenty-one years; or

(2) Such proceeding was with respect to a minor, and such minor has attained the age of twenty-one years, and five years have elapsed since the proceeding was disposed of by the court; or

(3) Such proceeding was with respect to an adult, and ten years have elapsed since the proceeding was disposed of by the court; and

(4) The destruction of such files, papers and records is authorized and directed by an order of the court, which order may refer to such papers by one or more of the above classifications, or by any class or kind of cases designated in the order, without express reference to any particular case. (1956, c. 555.)

§ 16.1-208.1. Time for filing of reports by probation officers; copies furnished to attorneys; amended reports. — Whenever a juvenile and domestic relations court directs an investigation pursuant to § 16.1-208 (1), the probation officer who conducts such investigation shall file his report with the clerk of the court directing the investigation and shall furnish a copy of such report to all attorneys representing parties in the matter before the court no later than seventy-two hours prior to the time set by the court for hearing the matter. If such probation officer discovers additional information or a change in circumstance after he has filed his report, he shall forthwith file an amended report and send a copy to each person who received a copy of the original report. Whenever such a report is not filed or an amended report is filed, the court shall grant such continuance of the proceedings as justice requires. All attorneys receiving such report or amended report shall return such to the clerk upon the conclusion of the hearing. (1972, c. 111; 1975, c. 286.)

§ 16.1-209. Reports of court officials and employees privileged. — All information obtained in discharge of official duties by any official or employee of the court shall be privileged, and shall not be disclosed to anyone other than the judge unless and until otherwise ordered by the judge or by the judge of a court of record; provided, however, that in any case when such information shall disclose that an offense against the criminal laws of the State has been committed, it shall be the duty of the official or employee of the court obtaining such information to report the same promptly to the Commonwealth's attorney or the police in the county or city where the offense occurred. (1950, p. 687; 1956, c. 555; 1958, c. 354.)

§ 16.1-222. Established; powers of Director. — A. There is hereby established within the Department of Corrections the Virginia Juvenile Justice Information System which shall operate separate and apart from the Central Criminal Records Exchange.

B. The Director of the Department of Corrections is authorized to employ such personnel, establish such offices, acquire such equipment and use such available equipment as shall be necessary to carry out the purpose of this chapter. He is further authorized to enter into agreements with other State agencies for services to be performed for the Virginia Juvenile Justice Information System by employees of such other agencies. (1976, c. 589.)

§ 16.1-223. Receipt, etc., of records; forms for reports; confidentiality. — A. The Virginia Juvenile Justice Information System shall receive, classify and file records required to be reported by it by § 16.1-224 of the Code. The Director is authorized to prepare and furnish to all court service personnel forms which shall be used for the making of such reports.

B. Records in the Virginia Juvenile Justice Information System shall be confidential, and information from such records which may be used to identify a juvenile shall be released only on the written order or instruction of a judge of a circuit court or a judge of a juvenile and domestic relations district court, notwithstanding any provision of chapter 8 (§ 16.1-139 et seq.) of Title 16.1.

Such records shall not be made available to the Central Criminal Records Exchange or any other automated data processing system, notwithstanding any provisions of chapter 23 (§ 19.2-387 et seq.), of Title 19.2 to the contrary; provided, however, that this prohibition shall not apply to statistical data not identifiable with any particular juvenile. (1976, c. 589.)

§ 16.1-225. Penalty for violation of confidentiality of records. — Any violation of the provisions of this chapter which require confidentiality of such records shall constitute a Class 3 misdemeanor. (1976, c. 589.)

§ 17-43. Records, etc., open to inspection; copies. — The records and papers of every court shall be open to inspection by any person and the clerk shall, when required, furnish copies thereof, except in cases in which it is otherwise specially provided. The certificate of the clerk to such copies shall, if the paper copied be recorded in a bound volume, contain the name and number of the volume and the page or folio at which the recordation of the paper begins. No person shall be permitted to use the clerk's office for the purpose of making copies of records in such manner, or to such extent, as will interfere with the business of the office or with its reasonable use by the general public. (Code 1919, § 3388; 1920, p. 242; 1930, p. 353; 1936, p. 17; 1942, p. 242; 1944, p. 40; 1946, p. 56; 1947, p. 96; 1952, c. 286.)

§ 18.2-251. Persons charged with first offense may be placed on probation; discharge. — Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings. (Code 1950, § 54-524.101:3; 1972, c. 798; 1975, cc. 14, 15; 1976, c. 181.)

§ 18.2-273. Report of conviction to Division of Motor Vehicles. — The clerk of every court of record and the judge of every court not of record shall, within thirty days after final conviction of any person in his court under the provisions of this article, report the fact thereof and the name, post-office address and street address of such person, together with the license plate number on the vehicle operated by such person to the Commissioner of the Division of Motor Vehicles who shall preserve a record thereof in his office. (Code 1950, § 18.1-61; 1960, c. 358; 1975, cc. 14, 15.)

§ 18.2-295. Registration of machine guns. — Every machine gun in this State shall be registered with the Department of State Police within twenty-four hours after its acquisition. Thereafter it shall be registered annually. Blanks for registration shall be prepared by the Superintendent of State Police, and furnished upon application. To comply with this section the application as filed shall be notarized and shall show the model and serial number of the gun, the name, address and occupation of the person in possession, and from whom and the purpose for which, the gun was acquired. The Superintendent of State Police shall immediately upon registration required in this section furnish the registrant with a certificate of registration, which shall be kept by the registrant and produced by him upon demand by any peace officer. Failure to keep or produce such certificate for inspection shall be a Class 3 misdemeanor, and any peace officer, may without warrant, seize the machine gun and apply for its confiscation as provided in § 18.2-296. No registered machine gun shall be transferred without the registrant notifying in writing the Superintendent of State Police the name and address of the transferee. The registration data shall not be subject to inspection by the public. Any person failing to register any gun as required by this section, shall be presumed to possess the same for offensive or aggressive purpose. (Code 1950, § 18.1-265; 1960, c. 358; 1972, c. 199; 1975, cc. 14, 15.)

CENTRAL CRIMINAL RECORDS EXCHANGE.

§ 19.2-388. Duties and authority of Exchange. — It shall be the duty of the Central Criminal Records Exchange to receive, classify and file criminal history record information as defined in § 9-108.1 and other records required to be reported to it by § 19.2-390. The Exchange shall also receive, record, and file the F.B.I. record of any person as furnished by the Federal Bureau of Investigation. Such records may also contain any information made available to the Exchange by any law-enforcement agency or any State official or agency prior to March fifteen, nineteen hundred sixty-eight. The Exchange is authorized to prepare and furnish to all State and local law-enforcement officials and agencies, and to clerks of circuit courts and district courts and to corrections and penal officials, forms which shall be used for the making of such reports. (Code 1950, § 19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771.)

§ 19.2-389. Dissemination of criminal history record information. — A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to: (i) authorized officers or employees of criminal justice agencies, as defined by § 9-108.1, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants; (ii) such other individuals and agencies which require criminal history record information to implement a State or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending; (iii) individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data; (iv) individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data; (v) agencies of State or federal government which are authorized by State or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information; and (vi) individuals and agencies where authorized by court order or court rule; (vii) agencies of any political subdivision of the State for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration; (viii) to the extent permitted by federal law or regulation, public service companies as defined in § 56-1 of the Code of Virginia, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration; and (ix) as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case, and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information to assure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. (Code 1950, § 19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771.)

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace and clerks of court; Exchange may receive, etc., material submitted by other agencies. — (a) Every State official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest on a charge of treason or of any felony or of any offense punishable as a misdemeanor under Title 54, or Class 1 and 2 misdemeanors under Title 18.2, except for violations of chapter 7, article 2 (§ 18.2-266 et seq.) and chapter 9, article 2 (§ 18.2-415) of Title 18.2. Such reports shall contain such information as shall be required by the Exchange and shall be accompanied by fingerprints of the individual arrested and information as to whether a photograph of the individual is

available. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until after a disposition of guilt is entered by a competent judicial authority.

(b) The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of any dismissal, nolle prosequi, acquittal, or conviction of, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection (a) of this section. No such report of conviction shall be made by the clerk of a district court unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction has been nullified in any manner, he shall also make a report of that fact, and each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange, on forms provided by it, any reversal or other amendment to a prior sentence reported to the Exchange. For each such report made by a clerk of a circuit court, he shall be allowed a fee of fifty cents to be paid from the appropriation for criminal charges.

(c) In addition to those on offenses enumerated in paragraph (a) of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution. (Code 1950, § 19.1-19.3; 1966, c. 669; 1968, c. 724; 1970, c. 191; 1971, Ex. Sess., c. 107; 1974, c. 575; 1975, cc. 495, 584; 1976, cc. 336, 572.)

§ 19.2-390. (Effective November 1, 1976.) Reports to be made by local law-enforcement officers, conservators of the peace and clerks of court; Exchange may receive, etc., material submitted by other agencies. — (a) Every State official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest on a charge of treason or of any felony or of any offense punishable as a misdemeanor under Title 54, or Class 1 and 2 misdemeanors under Title 18.2, except an arrest for a violation of article 2, of chapter 7 of Title 18.2 (§ 18.2-266 et seq.) or for violation of article 2 of chapter 9 of Title 18.2 (§ 18.2-415). Such reports shall contain such information as shall be required by the Exchange and shall be accompanied by fingerprints of the individual arrested and information as to whether a photograph of the individual is available. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until after a disposition of guilt is entered by a competent judicial authority.

(b) The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange of any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency, nolle prosequi, acquittal, or conviction of, or failure of a grand jury, to return a true bill as to, any person charged with an offense listed in subsection (a) of this section. In the case of offenses not required to be reported to the Exchange by subsection (a) of this section, the clerks of such courts shall make reports of any of the foregoing dispositions to the law-enforcement agency making the arrest, which agency shall file the disposition report with the arrest record required to be maintained by § 15.1-135.1. No such report of conviction shall be made by the clerk of a district court unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction has been nullified in any manner, he shall also make a report of that fact, and each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange, any reversal or other amendment to a prior sentence reported to the Exchange. For each such report made by a clerk of a circuit court, he shall be allowed a fee of fifty cents to be paid from the appropriation for criminal charges.

(c) In addition to those offenses enumerated in paragraph (a) of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

(d) Corrections officials responsible for maintaining correctional status information, as required by the rules and regulations of the Criminal Justice Services Commission, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange on forms provided by it.

(e) Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section shall adopt procedures reasonably designed at a minimum (i) to insure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than ninety days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

(f) Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information. (Code 1950, § 19.1-19.3; 1966, c. 669; 1968, c. 724; 1970, c. 191; 1971, Ex. Sess., c. 107; 1974, c. 575; 1975, cc. 495, 584; 1976, cc. 336, 572, 771.)

§ 24.1-26. Division of Criminal Records to furnish monthly list of convictions to State Board of Elections. — The Division of Central Criminal Records Exchange shall furnish monthly to the State Board of Elections a complete list of all persons convicted, during the preceding month, of those offenses set forth in the Constitution upon conviction of which a person is disqualified to vote. The Board shall transmit such statistics to the appropriate general registrars. Such list shall contain the name of the person convicted, his address, his county, city, or town of residence, his social security or other identification number approved by the Board, the date and place of his birth and the date of his conviction. The initial report shall be made upon request of the State Board of Elections but in no event later than January one, nineteen hundred seventy-three. (1970, c. 462; 1972, c. 620; 1975, c. 515.)

§ 32-31.7. Investigations in criminal matters. — Upon the request of the Superintendent of the State Police, any attorney for the Commonwealth or any chief of police, sheriff or sergeant responsible for law enforcement in the jurisdiction served by him, any local fire department, any State agency, or federal investigatory agency, the Division may conduct scientific investigations in any criminal matter. Such request procedures, forms and investigation reports shall be in accordance with rules and regulations established by the Board. In any case in which an attorney of record for a person accused of violation of any criminal law of the Commonwealth, or such person, may desire such scientific investigation, he shall, by motion filed before the court in which said charge is pending, certify that he in good faith believes that such scientific investigation may be relevant to such criminal charge. The motion shall be heard ex parte as soon as practicable and such court shall, after hearing upon such motion and being satisfied as to the correctness of such certification, order that the same be performed by the Division of Consolidated Laboratory Services and shall prescribe in its order the method of custody, transfer, and return of evidence submitted for scientific investigation. Upon the request of the Commonwealth's attorney of the jurisdiction in which the charge is pending, the Division shall furnish to him the results of such scientific investigation. (1972, c. 741; 1974, c. 619; 1975, c. 247.)

VIRGINIA PUBLIC RECORDS ACT.

§ 42.1-76. Legislative intent; title of chapter. — The General Assembly intends by this act to establish a single body of law applicable to all public officers and employees on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the State.

This chapter may be cited as the Virginia Public Records Act. (1976, c. 746.)

§ 42.1-77. Definitions. — As used in this chapter:

A. *"Agency"* shall mean all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and shall include the offices of constitutional officers.

B. *"Archival quality"* shall mean a quality of reproduction consistent with reproduction standards specified by the National Micrographics Association, American Standards Association or National Bureau of Standards.

C. *"Board"* shall mean the State Library Board.

D. *"Committee"* shall mean the State Public Records Advisory Committee.

E. *"Custodian"* shall mean the public official in charge of an office having public records.

F. *"State Librarian"* shall mean the State Librarian or his designated representative.

G. *"Public official"* shall mean all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the State government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the State government or its political subdivisions.

H. *"Public records"* shall mean all written books, papers, letters, documents, photographs, tapes, microfiche, microfilm, photostats, sound recordings, maps, other documentary materials or information in any recording medium regardless of physical form or characteristics, including data processing devices and computers, made or received in pursuance of law or in connection with the transaction of public business by any agency of the State government or its political subdivisions.

Nonrecord materials, meaning reference books and exhibit materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications, shall not be included within the definition of public records as used in this chapter. (1976, c. 746; 1977, c. 501.)

The 1977 amendment substituted "Commonwealth" for "State" in subdivision A, and added "and shall include the offices of constitutional officers" to the end of that subdivision.

§ 42.1-78. Confidentiality safeguarded. — Any records made confidential by law shall be so treated. Records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter. (1976, c. 746.)

§ 42.1-79. Records management function vested in Board; State Library to be official custodian; State Archivist. — The archival and records management function shall be vested in the State Library Board. The State Library shall be the official custodian and trustee for the State of all public records of whatever kind which are transferred to it from any public office of the State or any political subdivision thereof.

The State Library Board shall name a State Archivist who shall perform such functions as the State Library Board assigns. (1976, c. 746.)

§ 42.1-80. State Public Records Advisory Committee created; members; chairman and vice-chairman; compensation. — There is hereby created a State Public Records Advisory Committee. The Committee shall consist of ten members. The Committee membership shall include the Secretary of Administration and Finance, the State Librarian, the State Health Commissioner, the State Highway and Transportation Commissioner, the Director of the Division of Automated Data Processing, the Auditor of Public Accounts, the Executive Secretary of the Supreme Court, or their designated representatives and three members to be appointed by the Governor from the State at large. The gubernatorial appointments shall include two clerks of courts of record and a member of a local governing body. Those members appointed by the Governor shall remain members of the Committee for a term coincident with that of the Governor making the appointment, or until their successors shall be appointed and qualified. The Committee shall elect annually from its membership a chairman and vice-chairman. Members of the Committee shall receive no compensation for their services but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. (1976, c. 746; 1977, c. 501.)

§ 42.1-81. Powers and responsibilities of Committee. — The Committee shall have responsibility for proposing to the State Library Board rules, regulations and standards, not inconsistent with law, for the purpose of establishing uniform guidelines for the management and preservation of public records throughout the State. The Committee shall have the power to appoint such subcommittees and advisory bodies as it deems advisable. The Committee shall be assisted in the execution of its responsibilities by the State Librarian. (1976, c. 746.)

§ 42.1-82. Duties and powers of Library Board. — The State Library Board shall with the advice of the Committee:

A. Issue regulations designed to facilitate the creation, preservation, storage, filing, microfilming, management and destruction of public records by all agencies. Such regulations shall establish procedures for records management containing recommendations for the retention, disposal or other disposition of public records; procedures for the physical destruction or other disposition of public records proposed for disposal, and standards for the reproduction of records by photocopy or microphotography processes with the view to the disposal of the original records. Such standards shall relate to the quality of film used, preparation of the records for filming, proper identification of the records so that any individual document or series of documents can be located on the film with reasonable facility and that the copies contain all significant record detail, to the end that the photographic or microphotographic copies shall be of archival quality.

B. Issue regulations specifying permissible qualities of paper, ink and other materials to be used by agencies for public record purposes. The Board shall determine the specifications for and shall select and make available to all agencies lists of approved papers, photographic materials, ink, typewriter ribbons, carbon papers, stamping pads or other writing devices for different classes of public records, and only those approved may be purchased for use in the making of such records, except that these regulations and specifications shall not apply to clerks of courts of record.

C. Provide assistance to agencies in determining what records no longer have administrative, legal, fiscal or historical value and should be destroyed or disposed of in another manner. Each public official having in his custody official records shall assist the Board in the preparation of an inventory of all public records in his custody and in preparing a suggested schedule for retention and disposition of such records. No land or personal property book shall be destroyed without having first offered it to the State Library for preservation. (1976, c. 746; 1977, c. 501.)

§ 42.1-83. **Program for inventorying, scheduling, microfilming records; records of counties and cities; storage of records.** — The State Library Board shall formulate and execute a program to inventory, schedule, and microfilm official records of counties and cities which it determines have permanent value and to provide safe storage for microfilm copies of such records, and to give advice and assistance to local officials in their programs for creating, preserving, filing and making available public records in their custody.

Any original records shall be either stored in the State Library or in the locality at the decision of the local officials responsible for maintaining public records. Any original records shall be returned to the locality upon the written demand of the local officials responsible for maintaining local public records. Microfilm shall be stored in the State Library but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records. (1972, c. 555; 1976, c. 746.)

§ 42.1-84. **Same; records of agencies and subdivisions not covered under § 42.1-83.** — The State Library Board may formulate and execute a program of inventorying, repairing, and microfilming for security purposes the public records of the agencies and subdivisions not covered under the program established under § 42.1-83 which it determines have permanent value, and of providing safe storage of microfilm copies of such records. (1976, c. 746.)

§ 42.1-85. **Duties of State Librarian; agencies to cooperate.** — The State Librarian shall administer a records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of public records consistent with rules, regulations or standards promulgated by the State Library Board, including operations of a records center or centers. It shall be the duty of the State Librarian to establish procedures and techniques for the effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices, including the use of space, equipment, and supplies employed in creating, maintaining and servicing records.

It shall be the duty of any agency with public records to cooperate with the State Librarian in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of such agency. (1976, c. 746.)

§ 42.1-86. **Program to select and preserve important records; availability to public; security copies.** — In cooperation with the head of each agency, the State Librarian shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and for the protection of the rights and interests of persons. He shall provide for preserving, classifying, arranging and indexing so that such records are made available to the public and shall make or cause to be made security copies or designate as security copies existing copies of such essential public records. Security copies shall be of archival quality and such copies made by photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces and forms a durable medium and shall have the same force and effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Such security copies shall be preserved in such place and manner of safekeeping as prescribed by the State Library Board and provided by the Governor. Those public records deemed unnecessary for the transaction of the business of any agency, yet deemed to be of administrative, legal, fiscal or historical value, may be transferred with the consent of the State Librarian to the custody of the State Library. (1976, c. 746.)

§ 42.1-87. **Where records kept; duties of agencies; repair, etc., of record books; agency heads not divested of certain authority.** — Custodians of public records shall keep them in fireproof safes, vaults or in rooms designed to ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which thay are ordinarily used.

It shall be the duty of each agency to cooperate with the State Library in complying with rules and regulations promulgated by the Board. Each agency shall establish and maintain an active and continuing program for the economic and efficient management of records.

Records books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever the public records of any public official are in need of repair, restoration or rebinding, a judge of the court of record or the head of such agency or political subdivision of the State may authorize that the records in need of repair be removed from the building or office in which such records are ordinarily kept, for the length of time necessary to repair, restore or rebind them, provided such restoration and rebinding preserves the records without loss or damage to them. Any public official who causes a record book to be copied shall attest it and shall certify an oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

Nothing in this chapter shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments or to compel the removal of records deemed necessary by them in the performance of their statutory duty. (1976, c. 746.)

§ 42.1-88. Custodians to deliver all records at expiration of term; penalty for noncompliance. — Any custodian of any public records shall, at the expiration of his term of office, appointment or employment, deliver to his successor, or, if there be none, to the State Library, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a period of ten days after a request is made in writing by the successor or State Librarian to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor. (1976, c. 746.)

Cross reference. — As to punishment for Class 3 misdemeanors, see § 18.2-11.

§ 42.1-89. Petition and court order for return of public records not in authorized possession. — The State Librarian or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order such public records be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures. (1975, c. 180; 1976, c. 746.)

§ 42.1-90. Seizure of public records not in authorized possession. — A. At any time after the filing of the petition set out in § 42.1-89 or contemporaneous with such filing, the person seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to issue an order directed at the sheriff or other proper officer, as the case may be, commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth.

B. The judge aforesaid shall issue an order of seizure upon receipt of an affidavit from the petitioner which alleges that the material at issue may be sold, secreted, removed out of this State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if permitted to remain out of the petitioner's possession.

C. The aforementioned order of seizure shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner. (1975, c. 180; 1976, c. 746.)

DIVISION OF MOTOR VEHICLES.

§ 46.1-31. Records of Division; when open for inspection; driving records privileged; release of privileged information. — A. All registration and title records in the office of the Division shall be public records, but shall be open for inspection only subject to such regulations as the Commissioner may adopt.

B. The Commissioner shall consider all driving records in the Division as privileged public records and shall release such information only under the following conditions:

1. Upon the request of any individual or parent or legal guardian of a minor or representative thereof, the Commissioner shall provide that individual with a complete explanation of all information pertaining to that individual or minor, except that medical information, which in the judgment of the Commissioner should only be disclosed by a physician, shall be referred to any physician designated by the individual or parent or legal guardian.

2. Upon the request of any insurance carrier or surety or representative thereof, the Commissioner shall furnish an abstract of the operating record of any person subject to the provisions of this title. The abstract shall fully designate any record of any conviction of the person of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which he was involved and a report of which is required by § 46.1-400; provided, however, that no such report of any conviction or accident shall be made after forty months from the date of such conviction or accident unless the Commissioner or court used said conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall not be reported after forty months from the date that the driver's license or driving privilege has been reinstated; and provided further, however, that such abstract shall not be admissible in evidence in any court proceedings. The Commissioner shall charge a reasonable fee for the operating record and may furnish the operating record by electronic means.

3. Upon the request of any business official who provides the Commissioner in writing with an individual's driver's license number, the Commissioner may furnish that person the name and address of the individual as shown on the Division's records for that driver's license number.

4. Upon the request of any law-enforcement officer, Commonwealth's attorney or court, the Commissioner shall provide an abstract of the operating record showing all convictions, accidents, driver's license suspensions or revocations and other appropriate information as the requesting authority may require.

5. Upon request of the driver licensing authority in any other state, the District of Columbia or foreign country, the Commissioner shall provide such information as the requesting authority shall require.

6. Upon the written request of any employer or prospective employer, the Commissioner shall provide an abstract of an individual's operating record showing all convictions, accidents, license suspensions or revocations, and any type of license that the individual currently possesses; provided that the individual's position or the position that the individual is being considered for involves the operation of a motor vehicle.

7. Whenever the Commissioner issues an order to suspend or revoke the driver's license or driving privilege of any individual, he may notify the National Driver Register Service operated by the United States Department of Transportation.

8. Accident reports may be inspected under the provisions of § 46.1-410. (Code 1950, § 46-32; 1958, c. 541; 1964, c. 42; 1976, c. 505.)

§ 46.1-31.1. Same; release of information for research purposes, etc. — Notwithstanding the provisions of § 46.1-31, the Commissioner may furnish information for research purposes when such information is furnished in such a manner that individuals could not be identified or in other cases wherein, in his opinion, highway safety or the general welfare of the public will be promoted by so furnishing such information and the recipient of such information has agreed in writing with the Commissioner or his designee that the information furnished shall be used for no purpose other than the purpose for which it was furnished. (1976, c. 505.)

§ 46.1-31.2. Same; charges. — The Commissioner may make a reasonable charge for furnishing information, except that no fee shall be charged to any officials including court and police officials of the State and of any of the counties, towns and cities of the State and court, police, and licensing officials of other states and of the federal government, provided that the information requested is for official use. (1976, c. 505.)

§ 46.1-33: Repealed by Acts 1976, c. 505.

§ 46.1-33.1. Notice given for records supplied. — A. Whenever any records held by the Division of Motor Vehicles are supplied to third persons, such third persons shall notify the subject of such records that such records have been so supplied and shall send to such subject a copy of the records so supplied.

B. As used in this section "records supplied to third persons" means all abstracts of operating records held by the Division of Motor Vehicles in which the person who is the subject of such records is identified or identifiable, where such records are made available, in any way, to a person not the subject of such records.

C. This section shall not apply to any records supplied to any officials, including court and police officials of the State and of any of the counties, cities and towns of the State and court and police officials of other states and of the federal government, provided the records or information supplied is for official use; nor shall this section apply to any records supplied to any insurer or its agents unless insurance is denied or the premium charged therefor is increased either wholly or in part because of information contained in such records. (1976, c. 505.)

§ 46.1-36. Destruction of records. — The Commissioner of the Division of Motor Vehicles, with the approval of the Governor, may destroy any paper or record which is unnecessary to preserve as a permanent record. (Code 1950, § 46-37; 1958, c. 541; 1960, c. 121.)

§ 46.1-40.1. Certain State agencies to report to Division concerning the blind and nearly blind; use of such information by Division. — Every State agency having knowledge of the blind or nearly blind, maintaining any register of the blind, or administering either tax deductions or exemptions for or aid to the blind or nearly blind shall report in the first month of each year to the Division of Motor Vehicles the names of all persons so known, registered or benefitting from such deductions or exemptions, for aid to the blind or nearly blind. Such information received shall be used by the Division of Motor Vehicles only for the purpose of determining qualifications of such persons for the operation of a motor vehicle. (1968, c. 98.)

§ 46.1-406. Driver to make written report of certain accidents and certification of financial responsibility, if any, to Division; supplemental reports; reports by witnesses. — (a) The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of two hundred fifty dollars, or more, shall, within five days after the accident, make a written report of it to the Division.

(b) The Commissioner may require any driver of a vehicle involved in any accident of which report must be made to file a supplemental report whenever any report is insufficient in his opinion and he may require witnesses of accidents to render reports to the Division. A wilful failure to file the report required in this section shall constitute a misdemeanor and be punishable under § 46.1-16.

(c) The driver of a motor vehicle involved in any accident of which report must be made shall execute in detail that portion of the accident report relating to the certification of insurance or bond if there was in effect at the time of the accident with respect to the motor vehicle involved:

(1) A standard provisions automobile liability policy in form approved by the State Corporation Commission and issued by an insurance carrier authorized to do business in this State or, if the motor vehicle was not registered in this State or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy, or at its most recent renewal, an automobile liability policy acceptable to that Commission as substantially the equivalent of a standard provisions automobile liability policy; provided in either event, that every such automobile liability policy is subject to the limits provided in § 46.1-504.

(2) Any other form of liability insurance policy issued by an insurance carrier authorized to do business in this State or by a bond; provided that every such policy or bond mentioned herein is subject to a limit, exclusive of interest and costs, of twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of forty thousand dollars because of bodily injury to or death of two or more persons in any one accident and to a limit of five thousand dollars because of injury to or destruction of property of others in any one accident.

(d) The Commissioner shall forward the certification of insurance or bond to the insurance company or surety company, whichever is applicable, for verification as to whether or not the policy or bond certified was applicable to any liability that may arise out of the accident as to the named insured; provided, however, a copy of the certification of insurance or bond shall be retained by the Commissioner and shall be disclosed pursuant to § 46.1-410 of this Code. (Code 1950, § 46-398; 1958, c. 541; 1966, c. 130; 1972, c. 442; 1974, c. 453; 1975, c. 553.)

§ 46.1-407. Reports made by persons involved in accidents or by garages without prejudice and confidential; exceptions. — All accident reports made by persons involved in accidents or by garages shall be without prejudice to the individual so reporting and shall be for the confidential use of the Division or other State agencies having use for the records for accident prevention purposes, except that the Division may disclose the identity of a person involved in an accident when his identity is not otherwise known or when he denies his presence at the accident. (Code 1950, § 46-407; 1958, c. 541.)

§ 46.1-408. Extent to which such reports may be used as evidence. — No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the Division shall furnish upon demand of any person who has or claims to have made such a report or upon demand of any court a certificate showing that a specified accident report has or has not been made to the Division, solely to prove compliance or noncompliance with the requirement that the report be made to the Division. (Code 1950, § 46-408; 1958, c. 541.)

§ 46.1-409. Use of accident reports made by investigating officers. — Subject to the provisions of § 46.1-407 all accident reports made by investigating officers shall be for the confidential use of the Division and of other State agencies for accident prevention purposes and shall not be used as evidence in any trial, civil or criminal, arising out of any accident. The Division shall disclose from the reports, upon request of any person, the date, time and location of the accident and the names and addresses of the drivers, the owners of the vehicles involved, the injured persons, the witnesses and one investigating officer. (Code 1950, § 46-409; 1952, c. 544; 1958, c. 541.)

§ 46.1-410. Reports made under certain sections open to inspection by certain persons; copies. — But any report of an accident made pursuant to §§ 46.1-400 through 46.1-402, 46.1-404 (2), 46.1-407 and 46.1-408 shall be open to the inspection of any person involved or injured in the accident, or as a result thereof, or his attorney or any authorized representative of any insurance carrier reasonably anticipating exposure to civil liability as a consequence of the accident; and provided, further, that the Commissioner or Superintendent, or the area or division offices of the Department of State Police having a copy of any such report, shall upon written request of any such person or attorney or any authorized representative of any insurance carrier reasonably anticipating exposure to civil liability as a consequence of the accident furnish a copy of any such report at the expense of such person, attorney or representative. The Commissioner or Superintendent shall only be required to furnish under this section copies of reports required by the provisions of this article to be made directly to the Commissioner or Superintendent, or to the area or division offices of the Department of State Police having a copy of any such report, as the case may be. The Commissioner and the Superintendent, acting jointly, may set a reasonable fee for furnishing a copy of any such report, provide to whom payment shall be made, and establish a procedure for payment. Nothing contained herein shall require any division office of the Department of State Police to furnish any such copy when duplicating equipment is not available. (Code 1950, § 46-410; 1956, c. 648; 1958, c. 541; 1975, c. 21; 1976, c. 40.)

§ 46.1-412. Courts to keep full records of certain cases. — Every county or municipal court or the clerk thereof or clerk of a court of record in this State shall keep a full record of every case in which:

(a) A person is charged with (1) a violation of any law of this State pertaining to the operator or operation of a motor vehicle; (2) a violation of any ordinance of any county, city or town pertaining to the operator or operation of any motor vehicles except parking regulations; (3) any theft of a motor vehicle or unauthorized use thereof or theft of any part attached thereto;

(b) A person is charged with manslaughter or any other felony in the commission of which a motor vehicle was used;

(c) There is rendered a judgment for damages the rendering and nonpayment of which under the terms of this title require the Commissioner to suspend the operator's or chauffeur's license and registration in the name of the judgment debtor. (Code 1950, §§ 46-195, 46-414; 1952, c. 188; 1954, c. 168; 1958, c. 541; 1966, c. 533.)

§ 46.1-413. Courts to forward abstracts of records or furnish abstract data of conviction by electronic means in certain cases; records in office of Division; inspection; clerk's fee for reports. — In the event a person is convicted of a charge described in subdivision (a) or (b) of § 46.1-412 or forfeits bail or collateral or other deposit to secure the defendant's appearance upon such charges unless the conviction has been set aside or the forfeiture vacated, or in the event a court assigns a defendant to a driver education program or alcohol treatment or rehabilitation program, or both such programs, as authorized by § 18.2-271.1, or if compliance with the court's probation order is accepted by the court in lieu of a conviction under § 18.2-266 or the requirements specified in § 18.2-271 as provided in § 18.2-271.1, or in the event there is rendered a judgment for damages against a person as described in subdivision (c) of § 46.1-412 every general district court or clerk of a court of record shall forward an abstract of the record to the Commissioner within fifteen days, or in case of civil judgments, upon the request of the judgment creditor or his attorney, thirty days after such conviction, forfeiture, assignment, acceptance or judgment has become final without appeal or has become final by affirmance on appeal. Abstract data of conviction may be furnished to the Commissioner by electronic means provided that the content of the abstract and the certification complies with the requirements of § 46.1-414. In such cases where the abstract data is furnished by electronic means, the paper abstract shall not be required to be forwarded to the Commissioner. The Commissioner shall develop a method to insure that all data is received accurately. The Commissioner with the approval of the Governor may destroy the record of any such conviction, forfeiture, assignment, acceptance or judgment, when three years have elapsed from the date thereof, except records of conviction or forfeiture upon charges of reckless driving and exceeding the established lawful rates of speed, which records may be destroyed when five years have elapsed from the date thereof, and further excepting those records that alone or in connection with other records will require suspension or revocation of a license or registration under any applicable provisions of this title.

Such records required to be kept may, in the discretion of the Commissioner, be kept by electronic media or by photographic processes and when so done the abstract of the record may be destroyed.

There shall be allowed to the clerk of any court a fee of fifty cents for each report hereunder to be taxed and payable as a part of the court costs. (Code 1950, §§ 46-195, 46-414; 1952, c. 188; 1954, c. 168; 1958, c. 541; 1960, c. 179; 1966, c. 376; 1968, c. 335; 1972, c. 406; 1976, cc. 28, 336, 505.)

§ 46.1-413.1. Officers arresting drivers for certain offenses to request abstracts of operators' conviction records. — Every officer, State or local, who has arrested any person for (a) driving while under the influence of intoxicants or drugs in violation of § 18.2-266 or a parallel local ordinance, (b) [Repealed], (c) reckless driving in violation of §§ 46.1-189, 46.1-190 or 46.1-191 or a parallel local ordinance, (d) failure to stop at the scene of an accident in violation of § 46.1-176 or a parallel local ordinance or (e) driving without a license or while his license has been suspended or revoked in violation of §§ 18.2-272, 46.1-349, 46.1-350 or 46.1-351 or a parallel local ordinance, shall request from the Division of Motor Vehicles an abstract of such person's operator's or chauffeur's conviction record on file at the Division which the Division shall furnish to the Commonwealth's attorney of the jurisdiction in which the case will be heard, to be held available for the court in which such person is to be tried for such violation or charge; provided, however, that the failure of the Commonwealth's attorney to receive such abstract in any case shall not constitute grounds for the granting of a continuance of such case. (1968, c. 335; 1976, c. 148.)

§ 52-4.2. Division of Motor Vehicles to furnish copies of accident reports; Department to publish statistical information and to conduct research and experiments; copies to be furnished by Division to Commonwealth's attorneys. — (a) The Division of Motor Vehicles shall promptly furnish a copy of each accident report to the Department of State Police which shall tabulate and analyze all accident reports and shall publish annually, or more frequently, statistical information based thereon as to the number and circumstances of traffic accidents.

(b) Based upon its findings, after analysis, the Department may conduct further necessary detailed research to determine more fully the cause, control and prevention of highway accidents. It may further conduct experimental field tests within areas of the State from time to time to prove the practicability of various ideas advanced in traffic control and accident prevention.

(c) The Division of Motor Vehicles shall promptly furnish a copy of any particular accident report or a proof of financial responsibility to any Commonwealth's attorney upon the request of that person, without charge to be used only in the performance of his official duties. (Code 1950, §§ 46-411, 46-412; 1958, c. 550; 1968, c. 760.)

§ 52-12. Establishment of communication system. — There shall be established in the Department of State Police, a basic coordinating police communication system of private line typewriter communication, operating through sending and receiving stations or receiving stations only, and such associated equipment as may be necessary, at the headquarters of the Superintendent of State Police and at such substations or detached posts as shall be designated by the Superintendent, for the purpose of prompt collection and distribution of information throughout the State as the police problems of the State may require. Authority is hereby granted to connect such basic system directly or indirectly with similar systems in this or adjoining states. (1938, p. 674; Michie Code 1942, § 2154(233).)

§ 52-13. Installation, operation and maintenance of system; personnel. — The Superintendent of State Police is authorized to install, operate and maintain the basic system and to employ the necessary personnel for its installation, operation and maintenance. The persons so employed may be members of the State Police, or other State employees, particularly qualified for the duty they are to perform. (1938, p. 674; Michie Code 1942, § 2154(234).)

§ 52-14. Availability of system. — The basic system herein provided for may be made available for use by any department or division of the State government and by any county, city, town, railroad or other special police department lawfully maintained by any corporation in this State as well as agencies of the federal government, subject to the following terms and conditions:

(1) Application for permission to connect with the basic system shall be made to the Superintendent of State Police on forms to be provided by him;

(2) Such application may be approved by the Superintendent if, as and when in his discretion such connection is requisite and necessary for the best interests of the entire system;

(3) Upon approval of such application and before the applicant shall be connected with the basic system, such applicant must agree to assume and pay all rentals for sending and receiving stations, or receiving stations only, as may be authorized by the Superintendent for installation within the jurisdiction of the applicant, and any and all costs of installation and operation of such stations;

(4) The State shall pay all rental for necessary wire or circuit mileage required to connect such stations with the basic system. (1938, p. 674; Michie Code 1942, § 2154(235).)

§ 52-15. Control of system; orders, rules or regulations. — Such basic system shall remain at all times under the control of the Superintendent of State Police, and such control may be exercised by him through such member of his department as he shall designate for such purpose. The Superintendent may make and issue such orders, rules or regulations for the use of the system as in his discretion are necessary for efficient operation. (1938, p. 675; Michie Code 1942, § 2154(236).)

CHAPTER 6.

Uniform Reporting Program.

§ 52-25. Uniform crime reporting system established. — The Superintendent shall establish, organize, equip, staff and maintain within the Department of State Police, at such departmental locations as the Superintendent may direct, a uniform crime reporting system for the purpose of receiving, compiling, classifying, analyzing and publishing crime statistics of offenses known, persons arrested, and persons charged and other information pertaining to the investigation of crime and the apprehension of criminals, as hereinafter provided. The Superintendent shall appoint or designate necessary personnel to carry out the duties and assignments in accordance with rules and regulations pertaining thereto promulgated by the Superintendent. (1974, c. 577.)

§ 52-26. Cooperation with other law-enforcement agencies. — The Superintendent is authorized to maintain liaison and to cooperate with law-enforcement and criminal justice agencies of all counties and cities and all other agencies, departments, and institutions of the Commonwealth, other states and of the United States in order to develop and carry on a comprehensive uniform crime reporting program for the Commonwealth. Uniform crime reports for the Commonwealth shall be published by the Superintendent and distributed to all law-enforcement agencies, Commonwealth's attorneys, courts, and to the General Assembly and the office of the Governor, annually. (1974, c. 577.)

§ 52-27. Aid to reporting agencies. — The Department shall render all necessary aid and assistance to all reporting agencies in order to fulfill the requirements of the uniform crime reporting program for the Commonwealth. (1974, c. 577.)

§ 52-28. **Duty of State and local agencies to make reports.** — All State, county and municipal law-enforcement agencies shall submit to the Department all periodic uniform crime reports setting forth their activities in connection with law enforcement. The provisions of this chapter shall not apply to town police or to any police agency not paid entirely from public funds. (1974, c. 577.)

§ 52-29. **Rules and regulations for form, etc.** — The Superintendent shall adopt and promulgate rules and regulations prescribing the form, general content, time and manner of submission of such uniform crime reports of all offenses designated by him, including, but not limited to, part I and part II offenses as set out by the Federal Bureau of Investigation. (1974, c. 577.)

§ 52-30. **Reports to Federal Bureau of Investigation.** — The Department shall correlate reports submitted to it and shall compile and submit reports to the Federal Bureau of Investigation on behalf of all agencies of the Commonwealth, as may be required by the federal standards for the uniform crime reporting program. (1974, c. 577.)

§ 53-40. **Fingerprints, photographs and description.** — Photographs, finger prints and a description of each convict, male and female, received in the penitentiary, shall be taken and filed for identification purposes. Subject to the provisions of §§ 19.1-19.1 to 19.1-19.6 of the Code of Virginia the State penitentiary shall cooperate with federal, State, county and city law-enforcement agencies, insofar as it may deem proper in connection with the disclosure of information concerning such convicts, and the taking of fingerprints and photographs of persons charged with the commission of a felony. (1934, p. 64; Michie Code 1942, § 4997a; R. P. 1948, § 53-40; 1970, c. 648.)

§ 53-240. **Access to prisoners; reports of prison officials.** — It shall be the duty of all prison officials to grant to the members of the Board, or its properly accredited representatives, access at all reasonable times to any prisoner whom the Board has power to parole, to provide for the Board, or such representatives, facilities for communicating with and observing such prisoner, and to furnish to the Board such reports as the Board or the Chairman shall request concerning the conduct and character of any prisoner in their custody, and other facts deemed by the Board pertinent in determining whether such prisoner shall be paroled. (1942, p. 304; Michie Code 1942, § 4788d; R. P. 1948, § 53-240; 1970, c. 648; 1973, c. 253.)

§ 53-250. **Functions, powers and duties of probation and parole officers.** — In addition to other functions, powers and duties prescribed by this article, each probation and parole officer shall:

(1) Investigate and report on any case pending in any court or before any justice in his jurisdiction referred to him by the court or justice;

(2) Supervise and assist all persons within his territory placed on probation, and furnish every such person with a written statement of the conditions of his probation and instruct him therein;

(3) Supervise and assist all persons within his territory released on parole and may assist any person within his territory who has completed his parole or has been mandatorily released from any prison facility in this State and requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to the community;

(4) Arrest, and recommit to the place of confinement from which he was released, or in which he would have been confined but for the suspension of his sentence or of its imposition, for violation of the terms of probation or parole, any probationer or parolee under his supervision, or as directed by the Chairman, Board member, or the court, pending a hearing by the Board or the court, as the case may be;

(5) Keep such records, make such reports, and perform such other duties as are required of him by the Director or by the rules and regulations prescribed by the Board of Corrections, and such as are required of him by the court or judge by whom he was appointed.

Provided that nothing in this article shall be considered as requiring the investigation or supervision of cases before juvenile and domestic relations district courts. (1942, p. 306; Michie Code 1942, § 4788g; 1944, p. 286; R. P. 1948, § 53-350; 1970, c. 648; 1973, c. 253; 1974, cc. 44, 45, 240; 1975, c. 630; 1976, c. 39.)

§ 881. Examination of public records

Public records defined

(a) When used in this chapter "public records" includes all records and documents of or belonging to this Territory or any branch of government in such Territory or any department, board, council or committee of any branch of government.

Citizens right to examine

(b) Every citizen of this Territory shall have the right to examine all public records and to copy such records, and the news media may publish such records, unless some other provision of the Code expressly limits such right or requires such records to be kept secret or confidential. The right to copy records shall include the right to make photographs or photographic copies while the records are in the possession of the lawful custodian of the records.

All rights under this section are in addition to the right to obtain certified copies of records under section 882 herein.

Supervision

(c) Such examination and copying shall be done under the supervision of the lawful custodian of the records or his authorized designee. The lawful custodian may adopt and enforce reasonable rules and regulations regarding such work and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for such work, but if it is impracticable to do such work in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for such work. All expenses of such work shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or his authorized deputy in supervising the records during such work.

Hours when available

(d) The rights of citizens under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m., Monday through Friday, excluding legal holidays, unless the citizen exercising such right and the lawful custodian agree on a different time.

Enforcement of rights

(e) The provisions of this chapter and all rights of citizens under this chapter may be enforced by mandamus or injunction whether or not any other remedy is also available.

Penalty

(f) It shall be unlawful for any person to deny or refuse any citizen of this Territory any right under this chapter, or to cause any such right to be denied or refused. Any person knowingly violating or attempting to violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars.

Confidential records

(g) The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release information:

1. Personal information in records, regarding a student, prospective student, or former students of a public or nonpublic school or educational institution maintaining such records.

2. Hospital records and medical records of the condition, diagnosis, care or treatment of a patient or former patient, including outpatients.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body.

5. Peace officers investigative reports, except where disclosure is authorized elsewhere in this Code.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

7. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.

8. Information regarding negotiations with a prospective beneficiary for investment incentive benefits.

9. Criminal identification files of the Department of Public Safety. However, records of current and prior arrests shall be public records.

10. Personal information in confidential personnel records of the Division of Personnel or other department or agency where same may be kept.

Injunction to restrain examination

(h) In accordance with the rules of civil procedure the district court may grant an injunction restraining the examination (including copying) of a specific public record, if the petition supported by affidavit shows and if the court finds that such examination would clearly not be in the public interest and would substantially and irreparably injure any person or persons. The district court shall take into account the policy of this chapter that free and open

examination of public records is generally in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Such injunction shall be subject to the rules of civil procedure except that the court in its discretion may waive bond. Reasonable delay by any person in permitting the examination of a record in order to seek an injunction under this section is not a violation of this chapter, if such person believes in good faith that he is entitled to an injunction restraining the examination of such record.—Amended Dec. 6, 1972, No. 3346, Sess. L. 1972, p. 520.

CRIMINAL HISTORY RECORD INFORMATION

CHAPTER 314

SUBSTITUTE SENATE BILL NO. 2608

An Act relating to crimes; amending section 2, chapter 152, Laws of 1972 ex. sess. and RCW 43.43.705; amending section 3, chapter 152, Laws of 1972 ex. sess. and RCW 43.43.710; amending section 7, chapter 152, Laws of 1972 ex. sess. and RCW 43.43.730; amending section 23, chapter 152, Laws of 1972 ex. sess. and RCW 43.43.810; amending section 31, chapter 1, Laws of 1973 as last amended by section 5, chapter 82, Laws of 1975–'76 2nd ex. sess. and RCW 42.17.310; adding a new chapter to Title 10 RCW; defining crimes; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

New Section. Section 1.

The legislature declares that it is the policy of the state of Washington to provide for the completeness, accuracy, confidentiality, and security of criminal history record information and victim, witness, and complainant record information as defined in this chapter.

New Section. Sec. 2.

This 1977 amendatory act may be cited as the Washington State Criminal Records Privacy Act.

New Section. Sec. 3.

For purposes of this chapter, the definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, other than juveniles, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including sentences, correctional supervision, and release. The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;

(e) Records of any traffic offenses as maintained by the department of motor vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130 as now existing or hereafter amended;

(f) Records of any aviation violations or offenses as maintained by the aeronautics commission for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 14.04.330 as now existing or hereafter amended;

(g) Announcements of executive clemency.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, or service of warrant and no disposition has been entered.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal, or acquittal: *Provided, however,* That a dismissal entered after a period of probation, suspension, or deferral of sentence shall be considered a disposition adverse to the subject.

(5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "The administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime.

(7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single record keeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;

(b) The furnishing of information by one criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge resulting from an investigation by that department, is not a dissemination;

(c) The reporting of an event to a record keeping agency for the purpose of maintaining the record is not a dissemination.

(9) "State planning agency" shall mean that agency designated by law or executive order to fulfill the functions established by 42 U.S.C. Section 3701, the "Omnibus Crime Control and Safe Streets Act of 1968", as amended.

New Section. Sec. 4.

Effective January 1, 1978, no criminal justice agency shall disseminate criminal history record information pertaining to an arrest, detention, indictment, information, or other formal criminal charge made after December 31, 1977, unless the record disseminated states the disposition of such charge to the extent dispositions have been made at the time of the request for the information: *Provided, however,* That if a disposition occurring within ten days immediately preceding the dissemination has not been reported to the agency disseminating the criminal history record information, or if information has been received by the agency within the seventy-two hours immediately preceding the dissemination, that information shall not be required to be included in the dissemination.

Effective January 1, 1978, no criminal justice agency shall disseminate criminal history record information which shall include information concerning a felony or gross misdemeanor without first making inquiry of the identification section of the Washington state patrol for the purpose of obtaining the most current and complete information available, unless one or more of the following circumstances exists:

(1) The information to be disseminated is needed for a purpose in the administration of criminal justice for which time is of the essence and the identification section in technically or physically incapable of responding within the required time;

(2) The full information requested and to be disseminated relates to specific facts or incidents which are within the direct knowledge of the agency which disseminates the information;

(3) The full information requested and to be disseminated is contained in a criminal history record information summary received from the identification section by the agency which is to make the dissemination not more than thirty days preceding the dissemination to be made;

(4) The statute, executive order, court rule, or court order pursuant to which the information is to be disseminated refers solely to information in the files of the agency which makes the dissemination; or

(5) The information requested and to be disseminated is for the express purpose of research, evaluative, or statistical activities to be based upon information maintained in the files of the agency or agencies from which the information is directly sought.

New Section. Sec. 5.

(1) Conviction records may be disseminated without restriction.

(2) Any criminal history record information which pertains to an incident for which a person is currently being processed by the criminal justice system, including the entire period of correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction.

(3) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to another criminal justice agency for any purpose associated with the administration of criminal justice, or in connection with the employment of the subject of the record by a criminal justice or juvenile justice agency. A criminal justice agency may respond to any inquiry from another criminal justice agency without any obligation to ascertain the purpose for which the information is to be used by the agency making the inquiry.

(4) Criminal history record information which includes nonconviction data may be disseminated by a criminal justice agency to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to records of arrest, charges, or allegations of criminal conduct or other nonconviction data and authorizes or directs that it be available or accessible for a specific purpose.

(5) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies pursuant to a contract with a criminal justice agency to provide services related to the administration of criminal justice. Such contract must specifically authorize access to criminal history record information, but need not specifically state that access to nonconviction data is included. The agreement must limit the use of the criminal history record information to stated purposes and insure the confidentiality and security of the information consistent with state law and any applicable federal statutes and regulations.

(6) Criminal history record information which includes nonconviction data may be disseminated to individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. Such agreement must authorize the access to nonconviction data, limit the use of that information which identifies specific individuals to research, evaluative, or statistical purposes, and contain provisions giving notice to the person or organization to which the records are disseminated that the use of information obtained therefrom and further dissemination of such information are subject to the provisions of this chapter and applicable federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(7) Every criminal justice agency that maintains and disseminates criminal history record information must maintain information pertaining to every dissemination of criminal history record information except a dissemination to the effect that the agency has no record concerning an individual. Information pertaining to disseminations shall include:

(a) An indication of to whom (agency or person) criminal history record information was disseminated;

(b) The date on which the information was disseminated;

(c) The individual to whom the information relates; and

(d) A brief description of the information disseminated.

The information pertaining to dissemination required to be maintained shall be retained for a period of not less than one year.

New Section. Sec. 6.

Criminal history record information which consists of nonconviction data only shall be subject to deletion from criminal justice agency files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a named or otherwise identified individual when two years or longer have elapsed since the record became nonconviction data as a result of the entry of a disposition favorable to the defendant, or upon the passage of three years from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained unless the defendant is a fugitive, or the case is under active prosecution according to a current certification made by the prosecuting attorney.

Such criminal history record information consisting of nonconviction data shall be deleted upon the request of the person who is the subject of the record: *Provided, however,* That the criminal justice agency maintaining the data may, at its option, refuse to make the deletion if:

(1) The disposition was a deferred prosecution or similar diversion of the alleged offender;

(2) The person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor;

(3) The individual who is the subject of the record has been arrested for or charged with another crime during the intervening period.

Nothing in this chapter is intended to restrict the authority of any court, through appropriate judicial proceedings, to order the modification or deletion of a record in a particular cause or concerning a particular individual or event.

New Section. Sec. 7.

(1) Criminal justice agencies may, in their discretion, disclose to persons who have suffered physical loss, property damage, or injury compensable through civil action, the identity of persons suspected as being responsible for such loss, damage, or injury together with such information as the agency reasonably believes may be of assistance to the victim in obtaining civil redress.

Such disclosure may be made without regard to whether the suspected offender is an adult or a juvenile, whether charges have or have not been filed, or a prosecuting authority has declined to file a charge or a charge has been dismissed.

(2) The disclosure by a criminal justice agency of investigative information pursuant to subsection (1) of this section shall not establish a duty to disclose any additional information concerning the same incident or make any subsequent disclosure of investigative information, except to the extent an additional disclosure is compelled by legal process.

New Section. Sec. 8.

All criminal justice agencies shall permit an individual who is, or who believes that he may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter 42.17 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The state planning agency shall establish rules for the challenge of records which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The state planning agency shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time limitations of not less than ninety days upon the requirement for disseminating corrected information.

New Section. Sec. 9.

The state planning agency is hereby designated the agency of state government responsible for the administration of the 1977 Washington State Criminal Records Privacy Act. The state planning agency may adopt any rules and regulations necessary for the performance of the administrative functions provided for in this chapter.

The state planning agency shall have the following specific administrative duties:

(1) To establish by rule and regulation standards for the security of criminal history information systems in order that such systems and the data contained therein be adequately protected from fire, theft, loss, destruction, other physical hazard, or unauthorized access;

(2) To establish by rule and regulation standards for personnel employed by criminal justice of other state and local government agencies in positions with responsibility for maintenance and dissemination of criminal history record information; and

(3) To contract with the Washington state auditor or other public or private agency, organization, or individual to perform audits of criminal history record information systems.

New Section. Sec. 10.

Criminal justice agencies shall be authorized to establish and collect reasonable fees for the dissemination of criminal history record information to agencies and persons other than criminal justice agencies.

New Section. Sec. 11.

Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this chapter, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant the amount of the actual damages, if any, sustained by him if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability or a person or agency to criminal prosecution for a violation of this chapter.

New Section. Sec. 12.

Violation of the provisions of this chapter shall constitute a misdemeanor, and any person whether as principal, agent, officer, or director for himself or for another person, or for any firm or corporation, public or private, or any municipality who or which shall violate any of the provisions of this chapter shall be guilty of a misdemeanor for each single violation. Any criminal prosecution shall not affect the right of any person to bring a civil action as authorized by this chapter or otherwise authorized by law.

Sec. 13. Section 31, chapter 1, Laws of 1973 as last amended by section 5, chapter 82, Laws of 1975–'76 2nd ex. sess. and RCW 42.17.310 are each amended to read as follows:

(1) The following shall be exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, welfare recipients, prisoners, probationers, or parolees.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would violate the taxpayer's right to privacy or would result in unfair competitive disadvantage to such taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property: *Provided,* That if at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern: *Provided, further,* That all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale, is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(2) The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records, exempt under the provisions of this section, may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records, is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

Sec. 14. Section 2, chapter 152, Laws of 1972 ex. sess. and RCW 43.43.705 are each amended to read as follows:

Upon the receipt of identification data from criminal justice agencies within this state, the section shall immediately cause the files to be examined and upon request shall promptly return to the contributor of such data a transcript of the record of previous arrests and dispositions of the persons described in the data submitted.

Upon application, the section shall furnish to criminal justice agencies a transcript of the criminal offender record information available pertaining to any person of whom the section has a record.

For the purposes of RCW 43.43.700 through 43.43.800 the following words and phrases shall have the following meanings:

"Criminal offender record information" includes, and shall be restricted to identifying data and public record information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal offender record information" shall not include intelligence, analytical, or investigative reports and files.

"Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

Applications for information shall be by a data communications network used exclusively by criminal justice agencies or in writing and information applied for shall be used solely in the due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(3).

The section may refuse to furnish any information pertaining to the identification or history of any person or persons of whom it has a record, or other information in its files and records, to any applicant if the chief determines that the applicant has previously misused information furnished to such applicant by the section or the chief believes that the applicant will not use the information requested solely for the purpose of due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(3). The applicant may appeal such determination and denial of information to the advisory council created in RCW 43.43.785 and the council may direct that the section furnish such information to the applicant.

Sec. 15. Section 3, chapter 152, Laws of 1972 ex. sess. and RCW 43.43.710 are each amended to read as follows:

Information contained in the files and records of the section relative to the commission of any crime by any person shall be considered privileged and shall not be made public or disclosed for any purpose except in accordance with chapter _____ RCW (sections 1 through 11 of this 1977 amendatory act).

Sec. 16. Section 7, chapter 152, Laws of 1972 ex. sess. and RCW 43.43.730 are each amended to read as follows:

(1) Any individual shall have the right to inspect criminal offender record information on file with the section which refers to him. If an individual believes such information to be inaccurate or incomplete, he may request the section to purge, modify or supplement it and to advise such persons or agencies who have received his record and whom the individual designates to modify it accordingly. Should the section decline to so act, or should the individual believe the section's decision to be otherwise unsatisfactory, the individual may appeal such decision to the superior court in the county in which he is resident, or the county from which the disputed record emanated or Thurston county. The court shall in such case conduct a de novo hearing, and may order such relief as it finds to be just and equitable.

(2) The section may prescribe reasonable hours and a place for inspection, and may impose such additional restrictions, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them: *Provided*, That the section may charge a reasonable fee for fingerprinting.

Sec. 17. Section 23, chapter 152, Laws of 1972 ex. sess. and RCW 43.43.810 are each amended to read as follows:

Any person who wilfully requests, obtains or seeks to obtain criminal offender record information under false pretenses, or who wilfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with this act, or any member, officer, employee or agent of the section, the council or any participating agency, who wilfully falsifies criminal offender record information, or any records relating thereto, shall for each such offense be guilty of a misdemeanor.

New Section. Sec. 18.

Sections 1 through 11 of this 1977 amendatory act shall constitute a new chapter in Title 10 RCW.

Approved June 21, 1977.

43.43.700 Identification section. Established—Powers and duties generally

There is hereby established within the Washington state patrol a section on identification hereafter referred to as the section.

In order to aid the administration of justice the section shall install systems for the identification of individuals, including the fingerprint system and such other systems as the chief deems necessary. The section shall keep a complete record and index of all information received in convenient form for consultation and comparison.

The section shall obtain from whatever source available and file for record the fingerprints, palmprints, photographs, or such other identification data as it deems necessary, of persons who have been or shall hereafter be lawfully arrested and charged with, or convicted of any criminal offense. The section may obtain like information concerning persons arrested for or convicted of crimes under the laws of another state or government. [Added by Laws 1st Ex Sess 1972 ch 152 § 1, effective February 25, 1972.]

credentials through the total period of attendance. Such comprehensive records, including matriculation, attendance, grades, disciplinary action, and financial accounts, shall be the permanent property of the institution, to be safeguarded from all hazards and not to be loaned or destroyed. From student records, faculty and administration records, files, financial records, and other sources, the institution shall develop such reports as the board shall require. Each institution shall provide documentary evidence of its compliance with nondiscriminatroy and equal opportunity policy in its employment practices and in its recruitment of students.

(8) Catalog. The college shall issue, at least biennially, a bulletin setting forth the character of the work which it offers. The content and format shall follow the usual pattern of professional college catalogs. Such announcement shall list its trustees, president, dean, and other administrative officers. It shall contain a listing of the members of the faculty with their respective academic credentials, i.e., degrees, issuing schools and dates. The courses are to be set forth by departments, showing for each subject its contents, and value in term, semester, or quarter hours. Information is to be given regarding entrance requirements, discipline, attendance, examinations, grades, promotion and graduation. Tuition, matriculation, laboratory, graduation and special fees shall be listed. An equitable student tuition refund policy shall be stated. There shall be brief descriptions of the library, laboratories, and clinic facilities. If an institution does not offer courses required for licensure eligibility in one or more states, it shall include a catalog statement disclosing such information together with a statement as to where a list of such states and their requirements is available within the institution.

(9) Admission procedure. The admission of students shall be the responsibility of an officer who is a member of the committee on admissions, and his decision shall be subject to the review of the committee. Documentary evidence of students' preliminary education shall be obtained and kept on file. All transcripts of records from other colleges shall be obtained directly from such schools.

(10) Preprofessional education requirement. The school must require an applicant for admission to have completed not less than one-half of the requirements for a baccalaureate degree at an accredited college or university.

(11) Transfers. Applicants for admission to advanced standing in a college shall be required to furnish evidence: (1) that they can meet the same entrance requirements as candidates for the first-year class of the admitting college; (2) that courses equivalent in content and quality to those given in the admitting college in the year or years preceding that to which admission is desired have been satisfactorily completed; (3) that the work was done in a chiropractic college acceptable to the committee on admissions of the admitting college, and (4) that the candidate has a letter of recommendation from the dean of the college from which transfer is made. Credits for work done in accredited colleges will be allowed only in the preclinical subjects. No candidate will be accepted from another college if dishonorably dismissed from it. For all students admitted to advanced standing, there will be on file with the registrar the same documents as required for admission to the first-year class and, in addition, a certified transcript of work completed together with a letter of honorary dismissal from the college from which transfer was made.

A transfer student must spend at least the last academic year of his college course in residence in the admitting college which confers his degree.

(12) Foreign students. A college in the United States must require an applicant who is not a citizen of the United States to: (1) submit proof of proficiency in English, (2) submit evidence of financial resources, or funding commitment, to complete a minimum of one year of education, and (3) meet the same education requirements as students matriculating from the United States.

(13) Orientation of new students. Colleges shall conduct orientation sessions for first-year students as a means of adjusting the student to his new environment. Student orientation shall include a discussion of the institution's objectives, organization, and procedures, including scholastic regulations, student conduct, and requirements for successful completion of the course of study. Emphasis shall be given to defining the student's position in relation to the profession he seeks to enter. He shall be given an explanation of the legal, economic, and social place of the profession in society. The student shall be given an understanding of state regulations of the profession and the role of the examining boards, both as a protection of the public and the practitioners licensed to practice.

(14) Student counseling. A well organized program of student counseling shall be established to assist students. A faculty counselor shall be assigned to each class to assist students with their educational and personal problems.

(15) Promotion. A college shall have a published policy regarding the earning and conferring of grades and progress through the program, and must adhere to such policy.

(16) Requirements for the degree. The candidate for graduation must have completed the prescribed curriculum of the college and have complied with all its regulations. Persons registered as special students and who already hold a doctorate in chiropractic may not be candidates for a duplicate degree.

Reviser's Note: Errors of punctuation or spelling in the above section occurred in the copy filed by the agency and appear herein pursuant to the requirements of RCW 34.08.040.

Reviser's Note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

NEW SECTION

WAC 114-12-135 SCORING AND LIMITATION OF EXAMINATIONS. To pass the examination, applicants for examination pursuant to RCW 18.25.030 shall make a grade of at least 70% on each subject, and an overall average of 75%. Candidates for licensing by examination will be limited to two attempts within any two-year period; the re-examination will be limited to such subjects the applicant failed to pass with a grade of 70% or better.

More frequent re-examination may be allowed by the board if the candidate has successfully completed sixty hours of academic training, at an approved chiropractic college, in the subjects the candidate failed to pass in the last examination.

WSR 78-03-065
ADOPTED RULES
PLANNING AND COMMUNITY AFFAIRS AGENCY
(Office of Community Development)
[Order 78-01—Filed Feb. 22, 1978]

I, James C. Frits, Deputy director of Planning and Community Affairs Agency (Office of Community Development), do promulgate and adopt at Capitol Center Building the annexed rules relating to chapter 365-50 WAC, for the security and privacy of criminal history record information.

This action is taken pursuant to Notice No. WSR 78-03-012 filed with the code reviser on 2/8/78. Such rules shall take effect pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 10.97.080 which directs that the Planning and Community Affairs Agency (Office of Community Development) has authority to implement the provisions of chapter 10.97 RCW, the Washington State Criminal Records Privacy Act.

The undersigned hereby declares that he has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) or the Higher Education Administrative Procedure Act (chapter 28B.19 RCW), as appropriate, and the State Register Act (chapter 34.08 RCW).

APPROVED AND ADOPTED February 22, 1978.

By James C. Frits
Deputy Director

Chapter 365-50 WAC
CRIMINAL RECORDS

NEW SECTION

WAC 365-50-010 GENERAL APPLICABILITY. The regulations in this chapter shall apply to state and local criminal justice agencies in the state of Washington, that collect, and maintain, or disseminate criminal history record information. The regulations shall also apply to criminal justice or other agencies outside the jurisdiction of the state of Washington, for the purpose of the dissemination of criminal history record information to other agencies by state of Washington criminal justice agencies. The provisions of chapter 314, 1977 ex. sess., chapter 10.97 RCW, do not generally apply to the courts and court record keeping agencies. The courts and court record keeping agencies have the right to require and receive criminal history record information from criminal justice agencies. The regulations are intended to cover all criminal justice records systems that contain criminal history record information, whether the systems are manual or automated. Chapter 314, Laws of 1977 ex. sess., chapter 10.97 RCW, defines the rights and privileges relating to criminal history record information and should not be interpreted to redefine or amend rights or privileges relevant to any other kinds of records or information.

NEW SECTION

WAC 365-50-020 DEFINITIONS. (1) "Criminal history record information" has the meaning set forth in RCW 10.97.030(1), and shall consist of the following information, pertaining to criminal offenders regardless of the kinds of files or records in which the information is contained:

(a) The individual subject's name and other specific identifiable notations.

(b) The date and place of arrest, detention or charge and any disposition therefrom;

(c) The name of the agency which made the arrest or otherwise initiated the subject's contact with the criminal justice system.

(2) "Records collected by" or "records maintained by" a criminal justice agency means (a) records directly generated or collected by that agency in the performance of its official functions, and (b) records properly obtained from another agency but retained by a criminal justice agency in the normal course of its business, and includes federal, state, or local rap sheets from wherever obtained if they are in the possession of the agency.

certification as a criminal justice agency prior to receiving such information. The state planning agency shall certify such an agency, based on a showing that the agency devotes a substantial portion of its annual budget to, and has as a primary function, the administration of criminal justice. The state planning agency shall keep a current list, of all agencies that have been certified as criminal justice agencies. Agencies which assert their right to be certified as a criminal justice agency shall submit a written request for certification to the SPA on the form provided under WAC 365-50-540.

The application shall include documentary evidence which establishes eligibility for access to criminal history information.

The SPA shall make a finding in writing on the eligibility or noneligibility of the applicant. The written finding together with reasons for the decisions shall be sent to the applicant.

NEW SECTION

WAC 365-50-070 INSPECTION——INDIVIDUAL'S RIGHT TO REVIEW RECORD. Every criminal justice agency shall permit an individual who is, or believes he may be, the subject of a criminal record maintained by that agency to come to the agency during its normal business hours and request to inspect said criminal history record. Criminal justice agency has the meaning set forth in WAC 365-50-020(5)(a) and shall include regional or branch offices of state or local criminal justice agencies including the Washington state patrol. If such agency or its regional or branch office does not have the facilities or capability to process such requests, the individual shall be referred to the nearest criminal justice agency having such facilities or capability, which agency shall process the individual's request.

NEW SECTION

WAC 365-50-080 INSPECTION——FORMS TO BE MADE AVAILABLE. The criminal justice agency shall make available a request form to be completed by the person who is the subject of the criminal record. The form shall be substantially equivalent to that set forth in WAC 365-50-560.

NEW SECTION

WAC 365-50-090 INSPECTION——IDENTIFICATION OF REQUESTER. Each criminal justice agency shall adopt rules pursuant to RCW 10.97.080.

NEW SECTION

WAC 365-50-100 INSPECTION——TIMELINESS AND MANNER OF AGENCY RESPONSE. (1) A criminal justice agency shall respond to a request to review by the subject of a criminal record as soon as administratively convenient, but in no event later than ten business days from the date of the receipt of the request.

(2) If the information requested concerns felonies, gross misdemeanors where the subject arrested was taken into custody, or any other offenses for which fingerprints would be submitted to the identification section of the Washington state patrol, the agency shall respond in the following manner, unless one of the exceptions in RCW 10.97.040(1) through (5) applies;

(a) The criminal justice agency receiving the request shall, without unnecessary delay, forward the request to the identification section of the Washington state patrol for processing.

(b) At the identification section, the request shall be processed and a copy of any criminal history record information in the files of the identification sections relating to the individual requester shall be forwarded to the criminal justice agency submitting the request to the identification section.

(c) Upon receipt by the criminal justice agency of the requester's criminal history record information from the identification sections, the agency shall, without unnecessary delay, notify the requester at his designated address or telephone number that the requested information is available for review.

(d) Upon notification by the criminal justice agency, the person who is the subject of the criminal history record may come to the agency during its normal business hours for the purpose of reviewing the record.

(3) If the information requested concerns misdemeanors, gross misdemeanors where the subject arrested was not taken into custody, or any offenses for which fingerprints were not in fact submitted to the identification section, or if the agency does not have, and is not willing to obtain a state identification section rap sheet, the agency shall respond by disclosing the identifiable descriptions and notations of arrests, charges, and dispositions that are contained in the files of the agency.

NEW SECTION

WAC 365-50-110 INSPECTION——TIME ALLOWED FOR REVIEW. A reasonable period of time shall be allowed each individual to examine criminal history record information pertaining to himself for purposes of determining its accuracy and completeness or the legality of its maintenance. Unless the subject of the record clearly indicates that less time is sufficient, a reasonable period of time shall mean at least thirty minutes.

NEW SECTION

WAC 365-50-120 INSPECTION——RETENTION OR REPRODUCTION OF RECORDS. No subject of a record shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the subject of the criminal history record information asserts his belief in writing that such information regarding himself is inaccurate, incomplete, or maintained in violation of law.

NEW SECTION

WAC 365-50-130 INSPECTION——PREVENTION OF UNAUTHORIZED RETENTION OR REPRODUCTION. Each criminal justice agency shall develop procedures to insure that improper retention or

mechanical reproduction of nonconviction data by any subject of a record does not occur.

NEW SECTION

WAC 365-50-140 INSPECTION——DESIGNATION OF PERSON TO ASSIST IN REVIEW. Any subject of a record entitled to examine criminal history record information pertaining to himself may designate another person of his choice to assist him in reading, interpreting, or otherwise reviewing his criminal record. The subject about whom the information pertains shall indicate, on the form provided by the agency pursuant to WAC 365-50-090, his consent to the inspection of criminal history record information pertaining to himself by the other person. The agency may also require the other person to sign the form. The designated person shall then be permitted to assist the subject of the criminal record in reviewing criminal history record information pertaining to the subject.

NEW SECTION

WAC 365-50-150 INSPECTION——STATEMENT OF PROCEDURES TO BE AVAILABLE. Every criminal justice agency that maintains criminal history record information shall prominently display and make available to the public a statement which informs the public that criminal history record information is maintained by that agency and that individuals have the right to review criminal history record information pertaining to themselves and to challenge its accuracy, completeness, or the legality of its maintenance. The statement shall also set forth in summary form, the procedure for obtaining access to such information for the purpose of review and shall state the fact that there exist procedures for administrative review of a refusal by the agency to correct, complete, or delete criminal history record information challenged by the individual.

NEW SECTION

WAC 365-50-160 INSPECTION——PROCEDURE FOR CORRECTIONAL OR DETENTION AGENCIES. Any state or local correctional or detention facility in the state of Washington having access to the identification section of the Washington state patrol shall permit an individual in custody in that facility to request to review any criminal history record information pertaining to himself maintained by the identification section. The correctional or detention facility shall follow the procedures set forth for law enforcement agencies in WAC 365-50-100. The identification section shall likewise follow the procedures set forth in WAC 365-50-100.

NEW SECTION

WAC 365-50-170 DELETION——INDIVIDUAL'S RIGHT TO HAVE CERTAIN INFORMATION DELETED. A person who is the subject of criminal history record information consisting of nonconviction data only may request that such information be deleted from his file in accordance with the provisions of RCW 10.97.060. If two years or longer have elapsed since the record became nonconviction data as a result of the entry of a disposition favorable to the defendant, or if three years or longer have elapsed from the date of arrest or issuance of a citation or warrant for an offense for which a conviction was not obtained, unless the person is a fugitive or the case is under active prosecution, the nonconviction data shall be deleted upon the request of the subject of the record. If the case is under active prosecution, the prosecuting attorney shall so certify in writing to the agency that is the object of the request to delete.

NEW SECTION

WAC 365-50-180 DELETION——AGENCY OPTION TO REFUSE TO DELETE. The criminal justice agency maintaining the information may refuse to make the deletion if: (1) The disposition was a deferred prosecution or similar diversion of the alleged offender; which has not become nonconviction data under 365-50-040; (2) the person who is the subject of the record has had a prior conviction for a felony or gross misdemeanor; or (3) the individual who is the subject of the record has been arrested for or charged with another crime during the intervening period.

NEW SECTION

WAC 365-50-190 DELETION——POLICIES TO BE ADOPTED. Every criminal justice agency that maintains files that are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a named or otherwise identified individual shall adopt policies to implement RCW 10.97-.060. Such policies shall be designed to structure the discretionary power of the agency to refuse to delete nonconviction data under RCW 10.97.060(1) through (3), and shall be available for inspection by the public.

NEW SECTION

WAC 365-50-200 DELETION——INQUIRIES REQUIRED. Every criminal justice agency which is the object of a request to delete nonconviction data shall inquire of the identification section of the Washington state patrol to determine whether one of the exceptions of RCW 10.97.060(1) through (3) applies. The agency shall also make inquiry of its local criminal history record information summary (local rap sheet), if one exists, or of the local prosecutorial agency, for the same purpose and to determine whether the case is under active prosecution. If none of the exceptions of RCW 10-.97.060 apply the agency shall delete the nonconviction data. When an agency makes a deletion in the criminal history record information, the state identification section of the Washington state patrol shall be notified of the deletion so their files may be corrected.

NEW SECTION

WAC 365-50-210 CHALLENGE——INDIVIDUAL'S RIGHT TO CHALLENGE. A subject seeking to challenge the accuracy, completeness, or the legality of the maintenance of any part of the criminal history record information pertaining to himself shall do so in writing, clearly identifying that information which he asserts to be inaccurate, incomplete, or maintained in violation of law. A subject may initiate a challenge at the agency where he is reviewing his criminal record by completing a form made available by that agency. It will be the agency's responsibility to supply the form and address of the agency whose record the subject is challenging. This includes only Washington state records.

NEW SECTION

WAC 365-50-220 CHALLENGE——FORMS TO BE MADE AVAILABLE. Every criminal justice agency which maintains criminal history record information or which authorizes individuals to use its facilities for the purpose of reviewing criminal history record information pertaining to those individuals shall make available forms to be used by individuals in challenging their criminal records. Such forms shall be substantially equivalent to that set forth in WAC 365-50-510.

NEW SECTION

WAC 365-50-230 CHALLENGE——FORWARDING OF CHALLENGE TO APPROPRIATE AGENCY. Upon receipt of a written challenge, the agency receiving the challenge shall forward a copy of the challenge to each agency which originally submitted the criminal history record information being challenged, together with a copy of that portion of the criminal history record that has been challenged (including, where practical, a copy of the information as originally submitted by the originating agency). If the information challenged was received directly from an originating agency and is contained in a record maintained by the agency receiving the challenge, the agency receiving the challenge shall examine its own records to ensure that such information was correctly recorded before forwarding the challenge to the originating agency.

NEW SECTION

WAC 365-50-240 CHALLENGE——AGENCY TO MAKE DETERMINATION. The agency which originally submitted the criminal history record information being challenged shall:

(1) Not later than ten business days after receiving the written challenge, acknowledge receipt of the challenge in writing; and

(2) Promptly, but in no event later than ten business days after acknowledging receipt of the challenge, either

(a) make any correction of any portion of the criminal history record information which the person challenging such information has designated as being inaccurate, incomplete, or maintained in violation of law, or

(b) inform the person challenging the criminal history record information, in writing, of the refusal of the agency which originated such information to amend the record in accordance with his challenge, the reason for the refusal, and the procedures established for review of that refusal.

NEW SECTION

WAC 365-50-250 CORRECTION OF ERRONEOUS INFORMATION. (1) An individual whose criminal history record has been challenged and corrected shall be provided with the names of all noncriminal justice agencies or persons to which the incorrect information has been disseminated. The originating agency must send information correcting the previously incorrect information to every criminal justice and noncriminal justice agency and persons to which the previously incorrect information was disseminated. This obligation shall be limited to disseminations made within one year of the date on which the challenge was initiated.

(2) Every criminal justice agency maintaining criminal history record information within the state shall adopt a procedure which, when significant information in a criminal history record maintained on an individual is determined to be inaccurate, leads to the dissemination of corrected information to every criminal justice and noncriminal justice agency and subject to which, the prior erroneous information was disseminated within the preceding one year.

NEW SECTION

WAC 365-50-260 REVIEW OF REFUSAL TO ALTER RECORD. A person who is the subject of a criminal record and who disagrees with the refusal of the agency maintaining or submitting the record to correct, complete, or delete the record, may request a review of the refusal within twenty business days of the date of receipt of such refusal. The request for review shall be in writing, and shall be made by the completion in a form substantially equivalent to that set forth in WAC 365-50-520. If review is requested, not later than thirty business days from the date on which the individual requested review, the head of the agency whose record or submission has been challenged shall complete the review and make a final determination of the challenge, unless, for good cause, the head of the agency extends the thirty day period. The thirty day period may be extended for a maximum of another thirty days. If the head of the agency determines that the challenge should not be allowed, he shall state his reasons in a written decision, a copy of which shall be provided to the subject of the record. Denial by the agency head constitutes a final decision under RCW 34.04.130.

NEW SECTION

WAC 365-50-270 DISSEMINATION——DISPOSITIONS TO BE INCLUDED. The requirements of (RCW 10.97.040) are effective as of January 1, 1978.

(1) No criminal justice agency shall disseminate criminal history record information pertaining to arrests or other formal criminal charges made after December

31, 1977 unless the record disseminated states the disposition of such arrests or charges to the extent that dispositions have been made at the time of the request for the information. Such disseminations are subject to the proviso set forth in paragraph 1 of RCW 10.97.040.

(2) No criminal justice agency shall disseminate criminal history record information concerning a felony or gross misdemeanor without first making inquiry of the indentification section of the Washington State Patrol for the purpose of obtaining the most current and complete information available unless one of the exceptions of RCW 10.97.040(1) through (5) applies. Predissemination query of the state identification section is required regardless of the date the record was made and regardless of whether a conviction was obtained.

NEW SECTION

WAC 365-50-280 DISSEMINATION——INQUIRY OF PROSECUTOR REQUIRED. If an arrest record reveals that no disposition has occurred, and more than one year has elapsed since the date of the arrest, citation, or service of a warrant, a criminal justice agency shall make inquiry of the prosecuting authority in whose jurisdiction the arrest occurred to determine whether proceedings are in fact still pending prior to making a dissemination. If proceedings are still pending, the prosecuting authority shall so certify in writing.

NEW SECTION

WAC 365-50-290 DISSEMINATION——TO IMPLEMENT A STATUTE OR OTHER GRANT OF AUTHORITY. (1) Criminal history record information which includes nonconviction data may be disseminated to implement a statute, ordinance, executive order, or a court rule, decision, or order which expressly refers to nonconviction data and which authorizes or directs that it be available or accessible for a specific purpose. A criminal justice agency shall demand satisfactory proof of certification from the state planning agency of the requesting individual's or agency's authority to receive the information prior to any dissemination.

(2) The state planning agency shall compile a list, to be updated annually, of noncriminal justice agencies authorized to receive nonconviction data along with copies of statutes, ordinances or other grants of authority. All criminal justice agencies shall refer to these lists in making disseminations pursuant to such authority.

The state planning agency shall identify, in that listing the specific purpose, for which the agency is authorized to receive criminal history information, which includes nonconviction data, on the basis of a need to know such information in the performance of its official duties. Noncriminal justice agencies shall be required to present evidence of such authorization before dissemination is made. The form prescribed in WAC 365-50-550 may be used for this purpose.

(3) Criminal justice agencies that receive state rap sheets from the identification section of the Washington state patrol may disseminate them further, but only to the same extent to which the identification section itself would be authorized to make a dissemination in the first instance. Nonconviction data based on an incident that arose in the jurisdiction of the agency about to make the dissemination is not subject to this restriction, if the agency is otherwise authorized to disseminate such information.

NEW SECTION

WAC 365-50-300 DISSEMINATION——PURSUANT TO CONTRACT FOR SERVICES. (1) Criminal history record information which includes nonconviction data may be disseminated pursuant to a contract to provide services, as set forth in RCW 10.97.050(5). The contract must contain provisions giving notice to the individual or agency to which the information is to be disseminated that the use of such information is subject to the provisions of chapter 10.97 RCW and these regulations, and federal statutes and regulations, which shall be cited with express reference to the penalties provided for a violation thereof.

(2) A criminal justice agency using an information system that contains criminal history record information, and that is controlled and managed by a noncriminal justice agency, the noncriminal justice agency may disseminate criminal history record information only as authorized by the criminal justice agency. Authorization shall be established in a contract between the criminal justice agency and the noncriminal justice agency providing the management service or support. The contract shall be consistent with physical security and personnel standards developed by the SPA under RCW 10.97.090. All programs, tapes, source documents, listings, and other developmental or related data processing information containing, or permitting any person to gain access to, criminal history record information, and all personnel involved in the development, maintenance, or operation of an automated information system containing criminal history record information are subject to the requirements of RCW 10.97.050(5) and these regulations. A statement to this effect shall also be included in the contract.

NEW SECTION

WAC 365-50-310 DISSEMINATION——RESEARCH PURPOSES. (1) Criminal history record information which includes nonconviction data may be disseminated for research purposes according to the provisions of RCW 10.97.050(6). The transfer agreement provided for by that section shall be substantially similar to that set forth in WAC 365-50-530 (Model Transfer Provisions).

(2) Criminal history record information contained in agency files may be disseminated to persons for research, evaluative or statistical purposes provided the researcher enters into a contract with the agency. If such a contract is entered into, it is not necessary for the researcher to obtain consent from the individual involved. The contract with the agency shall consist of a transfer agreement with the agency to whom the request is made.

(3) Either certification by the SPA or a transfer agreement (under subsection (1) of this section), are

necessary for the dissemination of nonconviction information to noncriminal justice agencies.

NEW SECTION

WAC 365-50-320 DISSEMINATION—— RECORD OF DISSEMINATIONS TO BE MAINTAINED. (1) Every criminal justice agency that maintains and disseminates criminal history record information shall maintain records indicating every dissemination of such information (including a confirmation of the existence of criminal history record information), except a dissemination or confirmation to the effect that the agency has no record concerning an individual, in accordance with the requirements of RCW 10.97.050(7). Such dissemination records may be kept separately, or may be included on the state or local criminal history record information summary (rap sheet) itself. If an agency receives a state rap sheet from the identification section of the Washington state patrol, or a local rap sheet if one exists, and makes a further dissemination of the rap sheet while retaining a copy for its own records, the agency shall make a record of the further dissemination, which may be included on the retained copy of the rap sheet.

(2) Records of information disseminated shall be for a period of not less than one year. Records of information disseminated shall include:

(a) An indication of to whom (agency or person) criminal history record information was disseminated;

(b) The date on which the information was disseminated;

(c) The individual to whom the information relates;

(d) A brief description of the information disseminated.

NEW SECTION

WAC 365-50-330 DISSEMINATION——FEES. A criminal justice agency may charge persons and agencies, other than criminal justice agencies, a reasonable fee, to reimburse agency's costs for disseminating the records. A schedule of such fees shall be posted in a convenient place accessible to the public.

NEW SECTION

WAC 365-50-500 FORM OF REQUEST TO INSPECT RECORD.

Agency Name and Address

No. .....
Date and Time Inspected .....
Agency .....

REQUEST FOR INSPECTION OF RECORD

Pursuant to RCW .....

Note: See Rules and Regulations printed on reverse side.

DATE .....

I, (Print Name), request permission to inspect such record of criminal offenses as are charged to me in the files of (Name of Agency).

In order to ensure positive identification as the person in question, I am stating that I was born (Date of Birth), in (Place of Birth), and I am willing to submit my fingerprints in the space below if required or requested.

(Fill in where applicable) Because I am unable to read ☐; do not understand English ☐; otherwise need assistance in reviewing my record ☐; (check applicable box), I designate and consent that (Name), whose address is (Address), assist me in examining the criminal history record information concerning myself.

.....
(Initials of subject)

.....
(Signature of designated person)

.....
(Signature of Applicant)

.....
(Address of Applicant)

Prints of right four fingers taken simultaneously.

NEW SECTION

WAC 365-50-520 FORM OF REQUEST TO REVIEW REFUSAL TO MODIFY RECORD.

Agency Name and Address

REQUEST FOR REVIEW OF REFUSAL TO MODIFY RECORD

Pursuant to RCW ..... and WAC .. ..

Note: See Rules and Regulations printed on reverse side.

DATE .....

I, (Print Name), request the head of (Name of Agency), to review and make a final determination of my challenge to the accuracy, completeness, or legality of retention of criminal history record information pertaining to myself and maintained by (Name of Agency).

My challenge, a copy of which is attached, was made on (Date of Challenge), and was refused on (Date of Agency Refusal). I request that my challenge be allowed and that my record be modified in accordance with such challenge.

.....
(Signature of Applicant)

.....
(Address of Applicant)

NEW SECTION

WAC 365-50-530 APPENDIX III TO STATE OF WASHINGTON PLAN FOR SECURITY AND PRIVACY OF CRIMINAL OFFENDER RECORDS.

APPENDIX III
TO
STATE OF WASHINGTON PLAN FOR SECURITY AND PRIVACY OF CRIMINAL OFFENDER RECORDS

MODEL TRANSFER PROVISIONS

SUGGESTED PROVISIONS TO BE INCLUDED IN AGREEMENTS FOR RELEASE OF

CRIMINAL HISTORY RECORD INFORMATION

BY A CRIMINAL JUSTICE
AGENCY FOR RESEARCH, EVALUATIVE OR STATISTICAL PURPOSES

AGREEMENT made this ..... day of ....., 197.., between ..... (hereinafter referred to as "RESEARCHER" and ..... (hereinafter referred to as "CRIMINAL JUSTICE AGENCY)".*

WHEREAS the RESEARCHER has made a written request to the CRIMINAL JUSTICE AGENCY dated .....,
a copy of which is annexed hereto and made a part hereof, and

WHEREAS the CRIMINAL JUSTICE AGENCY has reviewed said written request and determined that it clearly specifies (1) the criminal history record information sought, and (2) the research, evaluative or statistical purpose for which the said information is sought,** and

WHEREAS the RESEARCHER represents that (he) (she) (it) is in receipt of, and is familiar with, the provisions of 28 CFR Part 22, including provisions for sanctions at Parts 22.24(c) and 22.29 thereof,

NOW, THEREFORE IT IS AGREED AS FOLLOWS:

1. The CRIMINAL JUSTICE AGENCY will supply the following items of information to the RESEARCHER:

[Describe in Detail]***

---

2. The RESEARCHER will:

(a) use the said information only for the research, evaluative, or statistical purposes described in the above mentioned written request dated ..... and for no other purpose;

(b) limit access to said information to the RESEARCHER and those of the RESEARCHER'S employees whose responsibilities cannot be accomplished without such access, and who have been advised of, and agreed to comply with, the provisions of this agreement, and of 28 CFR Part 22;****

(c) store all said information received pursuant to this agreement in secure, locked containers;

(d) so far as possible, replace the name and address of any record subject with an alpha-numeric or other appropriate code;

(e) immediately notify the CRIMINAL JUSTICE AGENCY in writing of any proposed material changes in the purposes or objectives of its research, or in the manner in which said information will be used.

3. The RESEARCHER will not:

(a) disclose any of the said information in a form which is identifiable to an individual, in any project report or in any other manner whatsoever, except pursuant to 28 CFR Part 22.24 (b)(1)(2).

(b) make copies of any of the said information, except as clearly necessary for use by employees or contractors to accomplish the purposes of the research. (To the extent reasonably possible, copies shall not be made of criminal history record information, but information derived therefrom which is not identifiable to specific individuals shall be used for research tasks. Where this is not possible, every reasonable effort shall be made to utilize coded identification data as an alternative to names when producing copies of criminal history record information for working purposes.)

(c) utilize any of the said information for purposes or objectives or in a manner subject to the requirement for notice set forth in 2.(e) until specific written authorization therefor is received from the Criminal Justice Agency.

4. In the event the RESEARCHER deems it necessary, for the purposes of the research, to disclose said information to any subcontractor, (he) (she) (it) shall secure the written agreement of said subcontractor to comply with all the terms of this agreement as if (he) (she) (it) were the RESEARCHER named herein.****.

5. The RESEARCHER further agrees that:

(a) the CRIMINAL JUSTICE AGENCY shall have the right, at any time, to monitor, audit, and review the activities and policies of the RESEARCHER or its subcontractors in implementing this agreement in order to assure compliance therewith; and

(b) upon completion, termination or suspension of the researcher, it will return all said information, and any copies thereof made by the RESEARCHER, to the CRIMINAL JUSTICE AGENCY, unless the CRIMINAL JUSTICE AGENCY gives its written consent to destruction, obliteration or other alternative disposition.

6. In the event the RESEARCHER fails to comply with any term of this Agreement the CRIMINAL JUSTICE AGENCY shall have the right to take such action as it deems appropriate, including termination of this Agreement. If the CRIMINAL JUSTICE AGENCY so terminates this Agreement, the RESEARCHER and any subcontractors shall forthwith return all the said information, and all copies made thereof, to the CRIMINAL

JUSTICE AGENCY or make such alternative disposition thereof as is directed by the CRIMINAL JUSTICE AGENCY. The exercise of remedies pursuant to this paragraph shall be in addition to all sanctions provided by law, and to legal remedies available to parties injured by disclosures.

7. The RESEARCHER will hold the CRIMINAL JUSTICE AGENCY harmless from any damages or other liability which might be assessed against the CRIMINAL JUSTICE AGENCY as a result of disclosure by RESEARCHER of any information received pursuant to this Agreement.

IN WITNESS WHEREOF the parties have signed their names hereto this ..... day of ....., 197...

..... (CRIMINAL JUSTICE AGENCY)

by .....
(Name)

Title: .....

..... (RESEARCHERS)

by .....
(Name)

Title: .....

COMPLIANCE AGREEMENT of employee, consultant or subcontractor.

(I) (We), employee(s) of, consultant to, (and) (or) subcontractor of the RESEARCHER, acknowledge familiarity with the terms and conditions of the foregoing agreement between the CRIMINAL JUSTICE AGENCY AND RESEARCHER, and agree to comply with the terms and conditions thereof in (my) (our) use and protection of the criminal history record information obtained pursuant to the foregoing agreement.

....
(date) (signature)

....
(date) (signature)

NEW SECTION

WAC 365-50-540 CERTIFICATION REQUEST FORM FOR CRIMINAL JUSTICE AGENCIES SEEKING ACCESS TO CRIMINAL OFFENDER RECORD INFORMATION.

Certification Request Form for

Criminal Justice Agencies Seeking Access to

Criminal Offender Record Information

INSTRUCTIONS

This form is for criminal justice agencies requesting certification for access to Criminal History Record Information (hereinafter referred to as "CHRI"). Criminal justice agencies are defined by Title 10; Ch. 314 Section 3(5-6) and WAC 365-50-020(4)(a)(6)) state in relevant part:

WAC 365-50-020 4(a): Definition of Criminal Justice Agency

"Criminal Justice Agency" has the meaning set forth in RCW 10.97.030(5). "Government Agency" includes a state or local agency, an agency of the federal government or of another state (for the purpose of disseminating criminal history record information to another agency), and includes a subunit of an agency, which itself is not a criminal justice agency if the subunit allocates a substantial part of the budget to, and has as its primary functions, the administration of criminal justice.

REQUEST FOR CERTIFICATION

1. Agency making request:
   a. Name: ..... (Last First Middle)
   b. Address: ..... (Street City State Zip)
   c. Telephone Number: (.....) ..... (Area Code)
   d. Official or employee who should be contacted concerning the application.
      1) Name: ..... (Last First Middle Title)
      2) Address: ..... (Street City State Zip)
      3) Telephone Number: (.....) ..... (Area Code)
2. Cite specifically the statutory or regulatory provisions which establish your agency as a governmental agency involved in criminal justice activities, and the provisions which indicate your agency's need for CHRI.

   ..... (State/Federal Statute, Chapter/Title Number, Section Number, Paragraph Number)
3. Attach a copy of the above provision or provisions to this application and indicate, by marking, the specific language upon which you base your request.
4. State your agency's need for access to CHRI relative to the above cited provisions and to the actual performance of its criminal justice duties and responsibilities.
5. State the percentage of your agency's budget used for the "administration of criminal justice."

I hereby affirm that all facts and representations made in this document are true and accurate to the best of my knowledge, information and belief.

.....
Signature of person filling out form

.....
Title

.....
Date

NEW SECTION

WAC 365-50-550 CERTIFICATION REQUEST FORM FOR NONCRIMINAL JUSTICE AGENCIES SEEKING ACCESS TO CRIMINAL OFFENDER RECORD INFORMATION.

Certification Request Form for

Noncriminal Justice Agencies Seeking Access to

Criminal Offender Record Information

INSTRUCTIONS

This form is for the use of noncriminal justice agencies or individuals certification for access to Criminal Offender Record Information (hereinafter referred to as "CHRI"). In order for such agencies or individuals to be qualified to receive CHRI they must be authorized access to such information by statute pursuant to Title 10, chapter 314, Laws of 1977 ex. sess. and WAC 365-50-390 of the State Planning Agency. WAC 365-50-390 sets forth the following guidelines:

WAC 365-50-390——Dissemination to Implement A Statute Or Other Grant Of Authority

(1) Criminal history record information which includes nonconviction data may be disseminated to implement a statute, ordinance, executive order, or a court rule; decision, or order which expressly refers to nonconviction data and which authorizes or directs that it be available or accessible for a specific purpose. A criminal justice agency shall demand satisfactory proof of the requesting individual's or agency's authority to receive the information prior to any dissemination which shall consist of the submission of a copy of the statute ordinance, or other authority relied upon. Such statute, ordinance, or other authority or some other statute, ordinance, or authority must also authorize or direct the criminal justice agency to disseminate nonconviction data.

The State Planning Agency shall compile a list, to be updated annually, of noncriminal justice agencies authorized to receive nonconviction data, along with copies of statutes, ordinances or other grants of authority. All criminal justice agencies shall refer to these lists in making disseminations. The State Planning Agency shall identify, in that listing the specific purpose for which the agency is authorized to receive criminal history and nonconviction data on the basis of a need to know such information in the performance of its official duties. Noncriminal justice agencies shall be required to present evidence of such authorization before dissemination is made. The form prescribed in WAC 365-50-550 may be used for this purpose.

REQUEST FOR CERTIFICATION FOR NONCRIMINAL JUSTICE USERS UNDER WAC 365-50-290

1. Agency or individual seeking Certification

   a. Name: ---------- (Last First Middle)

   b. Address: ---------- (Street City State Zip)

   c. Telephone Number: (.....) ---------- (Area Code)

   d. If applicable, information concerning employee or official who should be contacted regarding this application.

      1) Name: ---------- (Last First Middle)

      2) Address: ---------- (Street City State Zip)

      3) Telephone Number: (.....) ---------- (Area Code)

2. a. Cite specifically the statutory provision, ordinance, executive order, court rule, decision or order or provisions upon which you base your request.

   State/Federal Statute/Local Ordinance, etc. Chapter/Title/ Article Number Section Number Paragraph No.

   b. Provide a copy of the contract with a criminal justice agency to provide services related to the administration of criminal justice activities pursuant to RCW 10.97.050(5).

3. Attach a copy of the above provision or provisions to this application and indicate, by marking, the specific language upon which you base your request.

4. State the need for access to CHRI, which includes nonconviction data relative to the statutory responsibilities cited in items 2 and 3 above.

I hereby affirm that all facts and representations made in this document are true and accurate to the best of my knowledge, information and belief.

---------- Signature of person filling out form

---------- Title

WSR 78-03-066

NOTICE OF PUBLIC MEETINGS

WHATCOM COMMUNITY COLLEGE

[Letter—Filed Feb. 21, 1978]

Notification of meeting cancellation.

To: Members of the Board of Trustees, News Media and the Public

CONTINUED

9 OF 10

JUDICIAL INFORMATION SYSTEM COMMITTEE RULES (JISCR)

Effective May 15, 1976 (except Rule 2, effective July 1, 1976)

Table of Rules

JISCR

RULE 1. JUDICIAL INFORMATION SYSTEM

It is the intent of the Supreme Court that a statewide Judicial Information System be developed. The system is to be designed and operated by the Administrator for the Courts under the direction of the Judicial Information System Committee and with the approval of the Supreme Court pursuant to RCW 2.56. The system is to serve the courts of the State of Washington.

RULE 2. COMPOSITION

a. Membership. The Judicial Information System Committee (JISC) shall be representative of the judiciary of the state of Washington and shall be appointed by the Chief Justice with the approval of the Supreme Court from a list of names submitted by representative groups and associations from within the Judicial system and shall be composed of a Supreme Court Justice (the Supreme Court), a Court of Appeals Judge (Court of Appeals), three superior court judges (Superior Court Judges' Association), three judges of courts of limited jurisdiction (Washington Magistrates Association), the Supreme Court Clerk, two county clerks (Washington State Association of County Clerks), a prosecuting attorney (Washington State Prosecuting Attorneys' Association), a lay citizen (Chief Justice), a representative of the Washington State Bar Association, a director of juvenile court services (Juvenile Directors Association), the Executive Director of the Washington State Data Processing Authority, the Administrator for the Courts, two superior court administrators (Association of Washington Superior Court Administrators) and three clerks/administrators from courts of limited jurisdiction (Washington State Court Administrators Association).

b. Terms of Office. The term of membership for those who are appointed to represent specific organizations shall be for a term of three years with the initial term as determined by lot, staggered so as to insure that an equal number of terms expire each year. Any vacancy in the membership of the committee shall be filed in the same manner in which the original appointment was made and the term of membership shall expire on the same date as the original appointment expiration date.

c. Operation. The Supreme Court Justice shall be the chairperson. The members of the committee shall elect a vice-chairperson from among themselves. Meetings of the committee shall be called regularly and at a minimum of four times per year at the discretion of the chair. Any members with two unexcused absences from regularly scheduled JISC meetings during any calendar year shall be requested to resign and the respective association shall appoint a successor to fulfill the unexpired term. Ad hoc committees may also be established for the purpose of making special studies and recommendations to the JISC as required and as recommended by the chair and approved by the committee. The JISC shall review the work of the Administrator for the Courts with regard to the Judicial Information System and be responsible for recommendations to the Supreme Court concerning policies, procedures and rules which affect the operation of the Judicial Information System or any new or presently existing information system projects within the state judiciary.

RULE ~~3~~. STAFF

Staff for the Judicial Information System Committee will be provided by and be responsible to the Administrator for the Courts who will be charged with providing operational, statistical and other information to legitimate and appropriate users of judicial information.

RULE 4. BUDGETS

The Administrator for the Courts, under the direction of the Judicial Information System Committee, and with the approval of the Supreme Court, shall prepare funding requests for personnel, hardware and software as required for a phased implementation of the Judicial Information System. Any budget requests prepared by the Administrator for the Courts shall address the issues of control and dissemination of data from court files, developmental and operational priorities, a clear definition of operational expenses and security and privacy of information and facilities within the system.

RULE 5. STANDARD DATA ELEMENTS

A standard court data element dictionary for the Judicial Information System shall be prepared and maintained by the Administrator for the Courts with the approval of the Judicial Information System Committee. Any modifications, additions or deletions from the standard court data element dictionary must be reviewed and approved by the Judicial Information System Committee.

RULE 6. REPORTS

The Administrator for the Courts shall furnish to the courts and clerks of the state, standard report formats as recommended and approved by the Judicial Information System Committee. Records and reports either in computerized or manual formats, shall be in accordance with the standard court data elements established by the Judicial Information System Committee and consistent with the definitions contained therein.

RULE 7. CODES AND CASE NUMBERS

The Administrator for the Courts shall establish, with the approval of the Judicial Information System Committee, a uniform set of codes and case numbering systems for criminal charges, civil actions, juvenile referrals, attorney identification and standard disposition identification codes.

RULE 8. RETENTION

The Administrator for the Courts shall establish retention periods for all computerized records based upon the recommendations of the Judicial Information System Committee and consistent with state law.

RULE 9. COMMUNICATIONS LINK WITH OTHER SYSTEMS

The Judicial Information System will serve as the communications link for the courts with all local, regional, statewide and national noncourt systems. The Judicial Information System shall perform all functions relating to the transfer of computerized judicial data or information except as specifically approved by the Supreme Court upon the recommendations of the Judicial Information System Committee.

RULE 10. ATTORNEY IDENTIFICATION NUMBERS

The Office of the Administrator for the Courts will assign and maintain a uniform attorney identification number consistent with the number currently utilized by the Washington State Bar Association. The use of such code numbers will be subject to rules promulgated by the Supreme Court upon recommendations by the Judicial Information System Committee and the Board of Governors of the Washington State Bar Association.

RULE 11. SECURITY, PRIVACY AND CONFIDENTIALITY

All Court record systems must conform to the privacy and confidentiality rules as promulgated by the Supreme Court upon the recommendation of the Judicial Information System Committee, which rules shall be consistent with all applicable law relating to public records. Any modifications, additions or deletions from the established rules must be reviewed by the Judicial Information System Committee and approved by the Supreme Court. Additionally:

(a) Courts obtaining information from computerized files subject to special security and privacy administrative rules or legislative direction must insure that all such rules or legislative enactments are followed in the handling of such information.

(b) In all automated systems, duplicate records must be prepared regularly and stored separately and a transaction log kept of all record changes covering the entire time period since the preparation of the last duplicate set of records.

(c) The Office of the Administrator for the Courts will maintain a library of court system documentation for the state. All automated information systems which have received approval from the Supreme Court to collect, store and/or disseminate computerized judicial information must submit to the Office of the Administrator for the Courts and maintain on file, a copy of all system documentation related to the collection, storage and dissemination of such information.

RULE 12. DISSEMINATION OF COURT INFORMATION

The Judicial Information System Committee will adopt rules consistent with all applicable law relating to public records, governing the release of information contained within the Judicial Information System. Such rules and any amendments thereto shall be forwarded to the Supreme Court and, unless altered by the Court or returned to the Judicial Information System Committee for its further consideration and recommendations, shall take effect forty-five (45) days after the receipt of such rules by the Supreme Court.

RULE 13. LOCAL COURT SYSTEMS

Counties or cities wishing to establish automated court record systems shall provide advance notice of the proposed development to the Judicial Information System Committee and the Office of the Administrator for the Courts, ninety (90) days prior to the commencement of such projects for the purpose of review and approval.

RULE 14. CONTROL OF DATA PROCESSING EQUIPMENT

Data processing for courts shall be processed on computer equipment managed and controlled by the courts. In exceptional instances where extreme care has been taken to ensure the integrity of the internal function of the courts, explicit approval may be obtained from the Supreme Court upon the recommendation of the Administrator for the Courts and the Judicial Information System Committee, to utilize facilities not totally managed and controlled by the courts.

RULE 15. RECORD AND DISSEMINATION DATA PROCESSING

The Office of the Administrator for the Courts shall be responsible for the recording and dissemination of decisions concerning the policies of the Supreme Court in the area of data processing, except for such policies as relate to the preparation of Appellate Court opinions and their publication in the official law reports which are the responsibility of the Reporter of Decisions and the Commission on State Law Reports.

RULE 16. EFFECTIVE DATE

These rules, with the exception of Rule 2, shall take effect on May 15, 1976. Rule 2 shall take effect on July 1, 1976, and until such time, the Superior Courts Management Information System (SCOMIS) Committee formed on February 21, 1974 shall continue to function as directed by this Court.

§ 15-2-24. Criminal identification bureau; establishment: supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.

(a) The superintendent of the department shall establish, equip and maintain at the departmental headquarters a criminal identification bureau, for the purpose of receiving and filing fingerprints, photographs, records and other information pertaining to the investigation of crime and the apprehension of criminals, as hereinafter provided. The superintendent shall appoint or designate a supervisor to be in charge of the criminal identification bureau and such supervisor shall be responsible to the superintendent for the affairs of the bureau. Members of the department assigned to the criminal identification bureau shall carry out their duties and assignments in accordance with internal management rules and regulations pertaining thereto promulgated by the superintendent.

(b) The criminal identification bureau shall cooperate with identification bureaus of other states and of the United States to develop and carry on a complete interstate, national and international system of criminal identification.

(c) The criminal identification bureau may furnish fingerprints, photographs, records or other information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the State of West Virginia upon proper request stating that the fingerprints, photographs, records or other information requested are necessary in the interest of and will be used solely in the administration of official duties and the criminal laws.

(d) The criminal identification bureau may furnish, with the approval of the superintendent, fingerprints, photographs, records or other information to any private or public agency, person, firm, association, corporation or other organization, other than a law-enforcement or governmental agency as to which the provisions of subsection (c) of this section shall govern and control, but all requests under the provisions of this subsection (d) for such fingerprints, photographs, records or other information must be accompanied by a written authorization signed and acknowledged by the person whose fingerprints, photographs, records or other information is to be released.

(e) The criminal identification bureau may furnish fingerprints, photographs, records and other information of persons arrested or sought to be arrested in this State to the identification bureau of the United States government and to other states for the purpose of aiding law enforcement.

(f) Persons in charge of any penal or correctional institution, including any city or county jail in this State, shall take, or cause to be taken, the fingerprints and description of all persons lawfully committed thereto or confined therein and furnish the same in duplicate to the criminal identification bureau, department of public safety. Such fingerprints shall be taken on forms approved by the superintendent of the department of public safety. All such officials as herein named may, when possible to do so, furnish photographs to the criminal identification bureau of such persons so fingerprinted.

(g) Members of the department of public safety, and all other state law-enforcement officials, sheriffs, deputy sheriffs, and each and every peace officer in this State, shall take or cause to be taken the fingerprints and

description of all persons arrested or detained by them, charged with any crime or offense in this State, in which the penalty provided therefor is confinement in any penal or correctional institution, or of any person who they have reason to believe is a fugitive from justice or an habitual criminal, and furnish the same in duplicate to the criminal identification bureau of the department of public safety on forms approved by the superintendent of said department. All such officials as herein named may, when possible to do so, furnish to the criminal identification bureau, photographs of such persons so fingerprinted. For the purpose of obtaining data for the preparation and submission to the governor and the legislature by the department of public safety of an annual statistical report on crime conditions in the State, the clerk of any court of record, the magistrate of any magistrate court and the mayor or clerk of any municipal court before which a person appears on any criminal charge shall report to the criminal identification bureau the sentence of the court or other disposition of the charge and the prosecuting attorney of every county shall report to the criminal identification bureau such additional information as the bureau may require for such purpose, and all such reports shall be on forms prepared and distributed by the department of public safety, shall be submitted monthly and shall cover the period of the preceding month.

(h) All persons arrested or detained pursuant to the requirements of this article shall give fingerprints and information required by subsections (f) and (g) of this section. Any person who has been fingerprinted or photographed in accordance with the provisions of this section, who is acquitted of the charges upon which he or she was arrested, and who has no previous criminal record, may, upon the presentation of satisfactory proof to the department, have such fingerprints or photographs, or both, returned to them.

(i) All state, county and municipal law-enforcement agencies shall submit to the bureau uniform crime reports setting forth their activities in connection with law enforcement. It shall be the duty of the bureau to adopt and promulgate rules and regulations prescribing the form, general content, time and manner of submission of such uniform crime reports. Willful or repeated failure by any state, county or municipal law-enforcement official to submit the uniform crime reports required by this article shall constitute neglect of duty in public office. The bureau shall correlate the reports submitted to it and shall compile and submit to the governor and the legislature semiannual reports based on such reports. A copy of such reports shall be furnished to all prosecuting attorneys and law-enforcement agencies.

(j) Neglect or refusal of any person mentioned in this section to make the report required herein, or to do or perform any act on his or her part to be done or performed in connection with the operation of this section, shall constitute a misdemeanor, and such person shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for a period of not more than sixty days, or both. Such neglect shall constitute misfeasance in office and subject such persons to removal from office. Any person who willfully removes, destroys or mutilates any of the fingerprints, photographs, records or other information of the department of public safety, shall be guilty of a misdemeanor, and such person shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or both. (1935, c. 27; 1965, c. 141; 1969, c. 43; 1971, c. 130; 1972, c. 45; 1977, c. 149.)

§ 29A-2-2. Making orders and records available.

Every agency shall publish or, pursuant to rules adopted in accordance with the provisions of this chapter, make available to public inspection all final orders, decisions and opinions in the adjudication of contested cases except those required for good cause to be held confidential and not cited as precedents. Save as otherwise required by statute, matters of official record shall, pursuant to rules adopted in accordance with the provisions of this chapter, be made avilable for public inspection. (1964, c. 1.)

CHAPTER 29B.

FREEDOM OF INFORMATION.

ARTICLE 1.

PUBLIC RECORDS.

§ 29B-1-1. Declaration of policy.

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy. (1977, c. 147.)

§ 29B-1-2. Definitions.

As used in this article:

(1) "Custodian" means the elected or appointed official charged with administering a public body.

(2) "Person" includes any natural person, corporation, partnership, firm or association.

(3) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

(4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.

(5) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics. (1977, c. 147.)

§ 29B-1-3. Inspection and copying.

(1) Every person has a right to inspect or copy any public record of a public body in this State, except as otherwise expressly provided by section four [§ 29B-1-4] of this article.

(2) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(3) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his duties.

(4) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays.

(a) Furnish copies of the requested information;

(b) Advise the person making the request of the time and place at which he may inspect and copy the materials; or

(c) Deny the request stating in writing the reasons for such denial.

Such a denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(5) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records. (1977, c. 147.)

§ 29B-1-4. Exemptions.

The following categories of information are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, that nothing in this article shall be construed as precluding an individual from inspecting or copying his own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers; and

(8) Internal memoranda or letters received or prepared by any public body. (1977, c. 147.)

§ 29B-1-5. Enforcement.

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date. (1977, c. 147.)

§ 29B-1-6. Violation of article; penalties.

Any custodian of any public records who shall willfully violate the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than ten days, or, in the discretion of the court, by both such fine and imprisonment. (1977, c. 147.)

§ 51–4–2. Inspection of records and papers; copies.

The records and papers of every court shall be open to the inspection of any person, and the clerk shall, when required, furnish copies thereof, except in cases where it is otherwise specially provided. (Code 1849, c. 163, § 15; Code 1860, c. 163, § 12; Code 1868, c. 117, § 5; 1875, c. 73, § 5; Code 1923, c. 117, § 5.)

§ 51–4–3. Preservation of papers.

All papers lawfully returned to, or filed in the clerk's office shall be preserved therein until legally delivered out. (Code 1849, c. 163, § 13; Code 1860, c. 163, § 10; Code 1868, c. 117, § 3; 1875, c. 73, § 3; Code 1923, c. 117, § 3.)

Trial Court Rules.—See Appendix, "Trial Court Rules (T.C.R.) for Trial Courts of Record," Rule I.

§ 51–4–4. Removal of records or papers out of county; penalty.

None of the records or papers of a court shall be removed by the clerk, nor allowed by him or by the court to be removed, out of the county wherein the clerk's office is kept, except on an occasion of invasion or insurrection, actual or threatened, when, in the opinion of the court, or, in a very sudden case, of the clerk, the same will be endangered, after which they shall be returned as soon as the danger ceases; and except in such other cases as are specifically provided by law, or by general order of the court permitting the removal or transfer thereof to counties within his circuit; or to another circuit in cases being heard by a visiting or special judge. In such cases of removal or transfer the clerk of the court from which such papers and records are removed shall take and preserve an appropriate written receipt therefor. Any clerk violating this section shall forfeit six hundred dollars. However, this section shall not be construed as to prevent a judge of a circuit court from taking files of papers from any county of his circuit, or directing the clerk to send such files to him, when he needs to use the same. (Code 1849, c. 163, § 14; Code 1860, c. 163, § 11; Code 1868, c. 117, § 4; 1875, c. 73, § 4; 1877, c. 60, § 1; Code 1923, c. 117, § 4; 1961, c. 21.)

Effect of amendment of 1961.—The amendment rewrote this section.

Trial Court Rules.—As to withdrawal of papers filed in clerks' office, see Appendix, "Trial Court Rules (T.C.R.) for Trial Courts of Record," Rule I, subdivision (a).

165.83 Criminal identification, records and statistics

(1) **Definitions.** As used in this section and s. 165.84:

(a) "Division" means the division of law enforcement services.

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employes of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Offense" means an act which is a felony, a misdemeanor or a violation of a city, county, village or town ordinance.

(2) The division shall:

(a) Obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state:

1. For an offense which is a felony.

2. For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances under ch. 161, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks.

3. For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subd. 2.

4. As a fugitive from justice.

5. For any other offense designated by the attorney general.

(b) Accept for filing fingerprints and other identifying data, taken at the discretion of the law enforcement agency involved, on persons arrested or taken into custody for offenses other than those listed in par. (a).

(c) Obtain and file fingerprints and other available identifying data on unidentified human corpses found in this state.

(d) Obtain and file information relating to identifiable stolen or lost property.

(e) Obtain and file a copy or detailed description of each arrest warrant issued in this state for the offenses under par. (a) but not served because the whereabouts of the person named on the warrant is unknown or because that person has left the state. All available identifying data shall be obtained with the copy of the warrant, including any information indicating that the person named on the warrant may be armed, dangerous or possessed of suicidal tendencies.

(f) Collect information concerning the number and nature of offenses known to have been committed in this state, the legal action taken in connection with such offenses from the inception of the complaint to the final discharge of the defendant and such other information as may be useful in the study of crime and the administration of justice. The administrator of the division may determine any other information to be obtained regarding crime statistics. However, the information shall include such data as may be requested by the F.B.I. under its system of uniform crime reports for the United States.

(g) Furnish all reporting officials with forms and instructions which specify in detail the nature of the information required under pars. (a) to (f), the time it is to be forwarded, the method of classifying and such other matters as shall facilitate collection and compilation.

(h) Cooperate with and assist all law enforcement agencies in the state in the establishment of a state system of criminal identification and in obtaining fingerprints and other identifying data on all persons described in pars. (a), (b) and (c).

(i) Offer assistance and, when practicable, instructions to all local law enforcement agencies in establishing efficient local bureaus of identification and records systems.

(j) Compare the fingerprints and descriptions that are received from law enforcement agencies with the fingerprints and descriptions already on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement agencies concerned and supply copies of the criminal record to these agencies.

(k) Make available all statistical information obtained to the governor and the legislature.

(m) Prepare and publish reports and releases, at least once a year and no later than July 1, containing the statistical information gathered under this section and presenting an accurate picture of crime in this state and of the operation of the agencies of criminal justice.

(n) Make available upon request, to all local and state law enforcement agencies in this state, to all federal law enforcement and criminal identification agencies, and to state law enforcement and criminal identification agencies in other states, any information in the files of the division which will aid these agencies in the performance of their official duties. For this purpose the division shall operate on a 24-hour a day basis, 7 days a week. Such information may also be made available to any other agency of this state or political subdivision of this state, and to any other federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only.

(p) Cooperate with other agencies of this state, the crime information agencies of other states, and the uniform crime reports and national crime information center systems of the F.B.I. in developing and conducting an interstate, national and international system of criminal identification, records and statistics.

165.84 Cooperation in criminal identification, records and statistics

(1) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, the fingerprints in duplicate, according to the fingerprint system of identification established by the director of the F.B.I., full face, profile and full length photographs, and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in s. 165.83(2)(a), of all persons arrested or taken into custody as fugitives from justice, and fingerprints in duplicate and other identifying data of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file at the division. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated in s. 165.83(2)(a) may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned upon request.

(2) Fingerprints and other identifying data required to be taken under sub. (1) shall be forwarded to the division within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the law enforcement agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the division so requests.

(3) All persons in charge of law enforcement agencies shall forward to the division copies or detailed descriptions of the arrest warrants and the identifying data described in s. 165.83(2)(e) immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the division of such service or withdrawal. In any case, the law enforcement agency concerned must annually, no later than January 31 of each year, confirm to the division all arrest warrants of this type which continue to be outstanding.

(4) All persons in charge of state penal and correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the director of the F.B.I., and full face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the division, together with any other identifying data requested, within 10 days after the arrival at the institution of the person committed. Full length photographs in release dress shall be taken immediately prior to the release of such persons from these institutions. Immediately after release, these photographs shall be forwarded to the division.

(5) All persons in charge of law enforcement agencies, all clerks of court, all municipal justices where they have no clerks, all persons in charge of state and county penal and correctional institutions, and all persons in charge of state and county probation and parole offices, shall supply the division with the information described in s. 165.83 (2) (f) on the basis of the forms and instructions to be supplied by the division under s. 165.83 (2) (g).

(6) All persons in charge of law enforcement agencies in this state shall furnish the division with any other identifying data required in accordance with guidelines established by the division. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the division copies of such items in these files as will aid in establishing the nucleus of the state criminal identification file.

Division 3. Criminal Identification Division.

§ 9-136.19. **Criminal identification division created.**—There is hereby created an agency of state government, under the office of the attorney general, which shall be known as the Wyoming criminal identification division. (Laws 1973, ch. 246, § 1.)

§ 9-136.20. **Director; appointment.** — The attorney general, with the approval of the governor, shall appoint a director of the criminal identification division. (Laws 1973, ch. 246, § 1.)

§ 9-136.21. **Same; qualifications.** — The director shall be a person experienced in modern methods of criminal identification and shall possess such qualifications as may be specified by the attorney general. (Laws 1973, ch. 246, § 1.)

§ 9-136.22. **Same; duties generally.** — The director shall be the chief administrative officer of the criminal identification division and shall supervise and direct the administration of all activities of the division. He shall, subject to the written approval of the attorney general, prescribe rules and regulations not inconsistent with law for the operation of the division and the conduct of its personnel and the distribution and performance of their duties. He shall employ such identification specialists and clerical assistants as are necessary to the proper and efficient operation of the division. The director shall be responsible to the attorney general and shall keep him informed of the activities of the division. (Laws 1973, ch. 246, § 1.)

§ 9-136.23. **Division; powers and duties generally.** — (a) It shall be the duty of the criminal identification division to establish and maintain complete systems for the identification of criminals which comply with modern and accepted methods in the field of criminal identification. The division shall obtain from whatever source procurable, and shall file and preserve for record such plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements and other information about, concerning or relating to any and all persons who have been convicted of or arrested for the commission of any felony or who shall have been convicted of or arrested for any misdemeanor involving moral turpitude.

(b) The division may also obtain like information concerning persons who have been convicted of violating any of the military, naval or criminal laws of the United States, or who may have been convicted of the commission of a crime in any other state, country, district or province which, if committed within this state, would be a felony.

(c) All information kept by the division shall be maintained, recorded and indexed in a systematic manner for the purpose of providing a convenient and expeditious method of consultation and comparison. (Laws 1973, ch. 246, § 1.)

§ 9-136.24. **Same; procedures, forms, training.** — The criminal identification division shall establish uniform procedures and forms for the collection and dissemination of criminal identification data and shall assist the law-enforcement agencies within the state in the establishment and implementation of such uniform procedures. The division shall provide to law-enforcement agencies and their personnel such training, assistance and instruction as may be deemed necessary to assure uniformity in the gathering and dissemination of criminal identification data. It shall be the duty of all law-enforcement agencies within the state to cooperate with the division in establishing and maintaining an efficient and coordinated system of identification. (Laws 1973, ch. 246, § 1.)

§ 9-136.25. Law-enforcement agencies; heads of custodial institutions; duties.—(a) Each time an adult is arrested within the state for a felony or for a misdemeanor involving moral turpitude, the state or local law-enforcement agency responsible for the arrest shall cause such person to be photographed, fingerprinted and otherwise processed in accordance with the uniform procedures prescribed by the criminal identification division. Upon the completion of processing, the law-enforcement agency responsible for the arrest shall send to the division such information as the director may deem necessary to aid the division in the proper discharge of its duties under this act [§§ 9-136.1 to 9-136.30].

(b) It shall be the duty of the warden of the state penitentiary and the superintendents of the State industrial school and the Wyoming girls' school to make and furnish to the division, in such manner and according to such methods as the division shall prescribe, photographs, fingerprints, modus operandi statements and other required identification of all persons who are confined in the respective institutions at the time of the effective date of this act, or who shall hereafter be confined therein.

(c) No minor shall be photographed or fingerprinted except in accordance with the Juvenile Court Act of 1971 [§§ 14-115.1 to 14-115.44]. (Laws 1973, ch. 246, § 1.)

Effective date.—Section 4, ch. 246, Laws 1973, provides that this act shall be in force and effect from and after July 1, 1973.

§ 9-136.26. Cooperation with similar agencies in other jurisdictions.—The criminal identification division shall cooperate with similar agencies of other states and with the national bureau of identification in the department of justice in Washington, District of Columbia, for the purpose of developing and carrying on a complete interstate, national and international system of criminal identification. (Laws 1973, ch. 246, § 1.)

§ 9-136.27. Law-enforcement officers; authority, immunity. — (a) Every law-enforcement officer in this state who has the authority to make arrests for violations of criminal laws, the attorney general, his deputies and assistants, and every prosecuting attorney, or deputy or assistant prosecuting attorney in this state shall have the authority to take fingerprints, photographs and other information relating to criminal identification and to compile reports or other documents in writing containing criminal intelligence information, including but not limited to statements taken from police informants, and reports based on the investigation and surveillance of suspected criminal activity.

(b) Such authorized persons may freely disseminate and exchange criminal identification data and criminal intelligence information among themselves and among law-enforcement agencies of other states or of the federal government.

(c) No person authorized to disseminate or exchange information shall be subject to liability, either civil or criminal, for contributing criminal identification data or criminal intelligence information or disseminating the same to authorized persons.

(d) Access to criminal identification and intelligence information shall be available to law-enforcement agencies only, and it shall be the responsibility of each law-enforcement agency in the state handling such information to take reasonable security precautions to prevent unauthorized persons from gaining access thereto. (Laws 1973, ch. 246, § 1.)

§ 9-136.28. Cooperation to achieve purposes of act; joint purchases.—(a) The director of the criminal identification division shall cooperate with the director of the division of criminal investigation and with other law-enforcement agencies in the state so that all agencies can successfully achieve the purposes of combating crime and developing an efficient system for the gathering, storage and dissemination of criminal intelligence. Criminal identification data on file with the division shall be made available to any law-enforcement agency within the state upon request.

(b) Under the supervision of the attorney general, and with the advice of the department of administration and fiscal control, the criminal identification division and the division of criminal investigation may jointly purchase and use such equipment and supplies as are susceptible to use by both agencies upon a cost-sharing basis agreed upon by the directors of the respective divisions. (Laws 1973, ch. 246, § 1.)

§ **9-136.29. Transfer of property.** — On the effective date of this act [§§ 9-136.1 to 9-136.30], the Wyoming board of identification and the Wyoming bureau of identification created by chapter 61, Session Laws of Wyoming, 1963, shall terminate, and all books, records, reports, equipment, property, accounts, liabilities and funds of those agencies shall be transferred to the division of criminal identification, office of the attorney general. (Laws 1973, ch. 246, § 1.)

Effective date.—Section 4, ch. 246, Laws 1973, provides that this act shall be in force and effect from and after July 1, 1973.

§ **9-136.30. Advisory council.**—An advisory council is hereby created for the division of criminal investigation and for the division of criminal identification to be composed of seven members appointed by the governor. One member shall be the president of the Wyoming peace officers' association; one member shall be a sheriff from a county within Wyoming; one member shall be a police chief from a city or town in Wyoming; two members who shall represent the public at large; and two members who shall be active in the field of law enforcement in Wyoming. It shall be the duty of the advisory council to assist and advise the attorney general on matters relating to or concerning the operation and administration of the state divisions of criminal investigation and identification. (Laws 1973, ch. 246, § 1.)

Appropriation.—Section 2, ch. 246, Laws 1973, provides: "There is hereby appropriated out of any funds of the treasury of Wyoming, not otherwise appropriated, the sum of $182,087 for the division of criminal investigation, office of the attorney general or so much thereof as may be necessary to enable the attorney general to carry out the provisions of this act."

Effective date.—Section 4, ch. 246, Laws 1973, provides that this act shall be in force and effect from and after July 1, 1973.

Attorney General.

Division 4. Planning Committee on Criminal Administration.

§ 9-136.31. **Planning committee on criminal administration created; membership.** — (a) There is created under the office of the attorney general the planning committee on criminal administration.

(b) The committee membership shall be reduced to fifteen (15) members, excluding legislative members, as terms of existing members expire. New members shall be appointed by the governor and shall serve at his pleasure. The members shall be representative of law enforcement and criminal justice agencies of Wyoming and of units of general local government within Wyoming. Two (2) additional committee members shall be members of the Wyoming legislature one (1) appointed by the president of the senate and one (1) by the speaker of the house. (Laws 1977, ch. 157, § 1.)

§ 9-136.32. **Same; designation of officers and agents to develop programs; executive committee; compensation; meetings.** — (a) The planning committee on criminal administration shall include the attorney general who shall be chairman. The committee shall designate a vice chairman, a secretary and other officers and agents as required to administer and develop the programs to be carried out, including the creation of an executive committee to act in the interim between meetings of the full committee with full power and authority of the full committee.

(b) The members of the committee shall not receive any salary for services but shall receive per diem and mileage as provided to state employees.

(c) The committee shall meet upon special call of either the governor or the attorney general. The committee shall meet at least once a year. The executive committee may, in the interim between meetings of the full committee, act in the place and stead of the full committee. (Laws 1977, ch. 157, § 1.)

§ **9-136.33. Office of the attorney general; powers and duties.** — (a) The attorney general shall:

(i) Distribute to the committee all federal funds granted to the state under and by reason of Public Law 94-503;

(ii) Allocate, from time to time, all federal funds granted to the committee between the state agency and units of general local government or combinations of these units both in the formulation of the comprehensive state plan and in grants for law enforcement and criminal justice purposes; and

(iii) Cooperate and administer federal funds, keep appropriate records and give an accounting of all the programs to the governor and the state legislature. (Laws 1977, ch. 157, § 1.)

Editor's note. — There is no subsection (b) in this section as it appears in the printed acts.

§ 9-136.34. Powers and duties of committee, administrator, etc. — (a) The committee and its administrator, officers, planning staff and agents shall:

(i) Organize, plan and conduct a statewide program of activities designed to strengthen and improve law enforcement and criminal justice in Wyoming;

(ii) Coordinate activities and programs of the several agencies, boards, departments and offices of the state of Wyoming and the units of local government including counties, cities and towns relating to the preparation and adoption of comprehensive plans to strengthen and improve law enforcement and criminal justice at every level;

(iii) Define, develop and correlate programs and projects for the state of Wyoming, and with the approval of the respective units of general local government, define, develop and correlate programs and projects for the units of general local government in Wyoming or for combinations of state or local government units for improvement and strengthening law enforcement and criminal justice;

(iv) Establish priority for the improvement of law enforcement and criminal justice throughout Wyoming;

(v) Cooperate fully with units of general local government or combinations of these units within Wyoming in the formulation of a statewide comprehensive plan prescribed under Part B of Public Law 94-503 and in the establishment of priorities and carrying out of programs and projects to improve and strengthen law enforcement as provided under Part C of Public Law 94-503; and

(vi) Prepare and submit, as required by W.S. 9-21, a report to the governor and the legislature of the activities of the committee and an evaluation of the program covering state planning and action programs, together with planning and action programs and assistance to units of general local government including cities, towns, counties and regional and divisional organizations and officials. (Laws 1977, ch. 157, § 1.)

§ 9-136.35. Appointment, removal and salary of administrator. — The administrator shall be appointed by the attorney general with the consent of the governor. The administrator may be removed at the discretion of the attorney general. The administrator's salary shall be set by the personnel division of the department of administration and fiscal control. (Laws 1977, ch. 157, § 1.)

§ 9-136.36. Employment and compensation of assistants and other personnel. — The administrator may employ assistants and other personnel as the attorney general, with the consent of the governor, may approve. Their salaries shall be set by the personnel division of the department of administration and fiscal control. (Laws 1977, ch. 157, § 1.)

§ 9-136.37. Gifts, etc. — The administrator, with the consent of the governor and the attorney general, may accept on behalf of Wyoming any gifts, grants or monies given for the purposes of development of planning and action programs to strengthen and improve law enforcement and criminal justice in Wyoming, both on the state and general local government level. Any grants shall be held by the state treasurer to the credit of the committee, and shall be expended in accordance with the terms of the gift or grant upon proper voucher drawn and approved by the office of the attorney general subject to other provisions of law. (Laws 1977, ch. 157, § 1.)

§ 9-136.38. Obtaining certain information from other officers, etc. — At the request of the administrator, the chairman of the committee or the governor, the committee may obtain any information from other officers, agents, departments, commissions, boards or bureaus of the state of Wyoming not privileged or confidential by law, for the proper performance of its duties and functions. (Laws 1977, ch. 157, § 1.)

PUBLIC RECORDS.

§ 9-692.1. Classification and definitions.—Definitions as used in this act [§§ 9-692.1 to 9-692.5]:

(a) The term "public records" when not otherwise specified shall include any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing, or other document, regardless of physical form or characteristics, and including all copies thereof, that have been made by the State of Wyoming and any counties, municipalities and political subdivisions thereof and by any agencies of the State of Wyoming, counties, municipalities, and political subdivisions thereof, or received by them in connection with the transaction of public business, except those privileged or confidential by law.

(b) Public records shall be classified as follows:

(i) The term "official public records" shall include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the State of Wyoming or any agency or subdivision thereof may be a party; all fidelity, surety and performance bonds; all claims filed against the State of Wyoming or any agency or subdivision thereof; all records or documents required by law to be filed with or kept by any agency or the State of Wyoming; and all other documents or records determined by the records committee to be official public records.

(ii) The term "office files and memoranda" shall include all records, correspondence, exhibits, books, booklets, drawings, maps, blank forms, or documents not above defined and classified as official public records; all duplicate copies of official public records filed with any agency of the State of Wyoming or subdivision thereof; all documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and all other documents or records, determined by the records committee to be office files and memoranda.

(c) The term "writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics.

(d) The term "political subdivision" means and includes every county, city and county, city, incorporated and unincorporated town, school district and special district within the state.

(e) The term "official custodian" means and includes any officer or employee of the state or any agency, institution or political subdivision thereof, who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(f) The term "custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(g) The term "person" means and includes any natural person, corporation, partnership, firm or association.

(h) The term "person in interest" means and includes the person who is the subject of a record or any representative designated by said person, except that if the subject of the record is under legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative. (Laws 1969, ch. 145, § 1.)

§ 9-692.2. Inspection—Generally.—(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this act [§§ 9-692.1 to 9-692.5] or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as shall be reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact.

(c) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage, and therefore not available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact. (Laws 1969, ch. 145, § 2.)

§ 9-692.3. Same—Grounds for denying right of inspection; statement of grounds for denial; order to show cause; order to restrict disclosure; hearing.—(a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (b) or (d) of this section:

(i) Such inspection would be contrary to any state statute;

(ii) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or

(iii) Such inspection is prohibited by rules promulgated by the supreme court, or by the order of any court of record.

(b) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest;

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, the attorney general, police department or any investigatory files compiled for any other law enforcement or prosecution purposes;

(ii) Test questions, scoring keys and other examination data pertaining to administration of a licensing examination, examination for employment or academic examination; except that written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(iii) The specific details of bona fide research projects being conducted by a state institution;

(iv) The contents of real estate appraisals made for the state or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the state or political subdivision, except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by Wyoming Statutes.

(v) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency.

(c) If the right of inspection of any record falling within any of the classifications listed in this subsection is allowed to any officer or employee of any newspaper, radio station, television station or other person or agency in the business of public dissemination of news or current events, it may be allowed to all such news media.

(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

(i) Medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports;

(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except that such files shall be available to the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work;

(iv) Letters of reference;

(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person;

(vi) Library, archives and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions; and

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care, and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him.

(e) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied, and it shall be furnished forthwith to the applicant.

(f) Any person denied the right to inspect any record covered by this act [§§ 9-692.1 to 9-692.5] may apply to the district court of the district wherein the record is found for any order directing the custodian of such record to show cause why he should not permit the inspection of such record.

(g) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the district court of the district in which such record is located for an order permitting him to restrict such disclosure. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of said hearing served upon him in the manner provided for service of process by the Wyoming Rules of Civil Procedure and shall have the right to appear and be heard. (Laws 1969, ch. 145, § 3.)

§ 9-692.4. Copies, printouts or photographs; fees.—(a) In all cases in which a person has the right to inspect any public records he may request that he be furnished copies, printouts or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(b) If the custodian does not have the facilities for making copies, printouts or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the records are in the possession, custody and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printingout or photographing as he may charge for furnishing copies under this section. (Laws 1969, ch. 145, § 4.)

§ 9-692.5. Penalty.—Any person who willfully and knowingly violates the provisions of this act [§§ 9-692.1 to 9-692.5] shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars ($100.00). (Laws 1969, ch. 145, § 5.)

STATUTORY AUTHORITY FOR NON-CRIMINAL JUSTICE USES

The following three (3) statutes are the only ones on record which allow access to criminal history information by non-criminal justice agencies.

§ 20-121. Attorney general's office designated state information agency; duties.—(a) The attorney general's office is designated as the state information agency under this act [§§ 20-105 to 20-142]. It shall:

(i) Compile a list of the courts and their addresses in this state having jurisdiction under this act and transmit it to the state information agency of every other state which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other state information agencies;

(ii) Maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this act; and

(iii) Forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other states.

(b) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the Social Security Act as amended.

(c) After the deposit of three copies of the complaint and certificate and one copy of the act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the attorney general who may undertake the representation. (Laws 1973, ch. 155, § 1.)

Real Estate Commission

33-355.11. Suspension or revocation of license. The commission may upon its own motion, and shall, upon verified complaint in writing of any person setting forth a cause of action under this section, ascertain the facts and if warranted hold a hearing for the suspension or revocation of a license. The commission shall have power to refuse a license for cause or to suspend or revoke a license where it has been obtained by false representation or where the licensee in performing or attempting to perform any of the acts mentioned herein, is found guilty of:

(f) Being convicted in a court of competent jurisdiction of this or any other state of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud or any similar offense or offenses, or pleading guilty or nolo contendere to any such offense or offenses, or

SYNOPSIS:

The Real Estate Commission can suspend or revoke a license for conviction for specific criminal conduct (33-355.11 (f)).

§ 35-347.26. **Suspension or revocation of registration.**—(a) A registration under W.S. 35-347.25 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the board upon a finding that the registrant:

(i) Has furnished false or fraudulent material information in any application filed under this act [§§ 35-347.1 to 35-347.55];

(ii) Has been convicted of a felony or misdemeanor involving moral turpitude under any state or federal law relating to any controlled substance;

(iii) Has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances;

(iv) Has willfully violated any of the provisions of this act, or any rules or regulations relating to controlled substances; or

(v) Has failed to provide adequate security for the storage of controlled substances to the extent that repeated diversions have occurred.

(b) *Limitation of revocation or suspension.*—The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) *Sealing and disposition of controlled substances.*—If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) *Notice to bureau.*—The board shall promptly notify the bureau of all orders suspending or revoking registration and all forfeitures of controlled substances. (Laws 1971, ch. 246, § 26; 1975, ch. 192, § 1.)

The 1975 amendment, in subsection (a), substituted "W.S. 35-347.25" for "section 25" in the introductory paragraph, redesignated former subdivisions (1) to (3) as subdivisions (i) to (iii), inserted "or misdemeanor involving moral turpitude" in subdivision (ii), and added subdivisions (iv) and (v).

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